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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

LETITIA FOIRER, MAJORITY STAFF DIRECTOR  
RUTH VAN MARK, MINORITY STAFF DIRECTOR

May 3, 2012

Ms. Leslie Gillespie-Marthaler  
Senior Advisor  
Office of Research and Development  
US Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

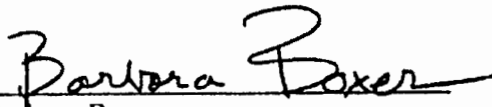
Dear Ms. Gillespie-Marthaler:

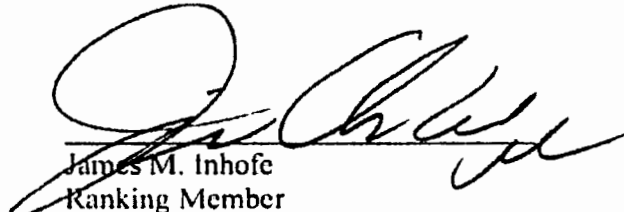
Thank you for appearing before the Committee on Environment and Public Works on March 27, 2012 at the hearing entitled, "Oversight Hearing on EPA's Work with Other Federal Entities to Reduce Pollution and Improve Environmental Performance." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Carper, Inhofe, Sessions and Crapo for the hearing record. Please submit your answers to these questions by COB May 17, 2012 to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to [Mara Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov). To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Grant Cope of the Majority Staff at (202) 224-8832, or Dimitri Karakitsos of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,

  
Barbara Boxer  
Chairman

  
James M. Inhofe  
Ranking Member

**Environment and Public Works Committee Hearing  
March 27, 2012  
Follow-Up Questions for Written Submission**

**Questions for Gillespie-Marthaler**

**Questions from:**

**Senator Tom Carper**

1. I applaud the military's advancement of environmentally beneficial sources of clean energy generation on its bases, but I'd like to ask you specifically whether you have explored less traditional, more advanced forms of clean energy generation beyond the legacy renewables. For example, fuel cell technology for stationary generation, such as those being built by American companies like Bloom Energy in my state of Delaware, can be more flexible and reliable than intermittent renewable technologies, and can require a fraction of the footprint.

Fuel cells are commercial-off-the-shelf technology and do not require lengthy environmental clearances so often required by large-scale wind and solar projects. Currently, fuel cells can be installed and operational faster than wind and solar facilities and do not require additional transmission capability to move electricity to the end user. Most importantly, the newest fuel cell technologies can provide clean, reliable electricity even when the electric grid goes down.

Fuel cell technology is not just in the research and development phase, the technology is real, proven, and being deployed by some of our country's leading companies. For example, some of the leading Fortune 500 companies, as well as leading educational institutions, are already deploying Bloom Energy's fuel cells to provide cleaner, more reliable, on-site electricity to power their office buildings, campuses, or data centers.

While the Department of Defense has invested significant time and resources into developing biofuels and traditional renewables, the additional energy reliability and security benefits offered by fuel cells, in addition to their environmental benefits, should not be overlooked as another tool for the federal government to simultaneously meet its energy and environmental goals. Can you please let me know what steps you are taking to incorporate US-manufactured stationary fuel cells into your clean energy plans?

I have been told that some Department of Defense installations want the benefits of this technology because of its energy security benefits, but policy guidance requiring "renewable" rather than "clean" and "secure" has limited their ability to move forward. Is this true?

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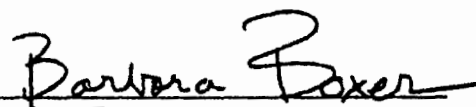
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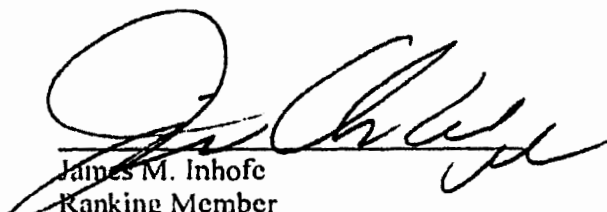
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**Senator James Inhofe**

- 1. Describe for the committee some of the water conservation measures you have begun implementing in your/DOD facilities. How did you choose these conservation measures over others available?**
- 2. EPA and the White House have increasingly focused efforts on maintaining and treating stormwater on site. I know there are a number of both legislative and executive orders that your facilities must comply with in managing stormwater. Can you please describe some of the challenges associated with additional stormwater controls as well as some of the choices that your facilities face in complying with stormwater mandates?**
- 3. Currently, EPA exclusively uses the LEED certification system for all new building construction. However, LEED currently does not include Life Cycle Analysis and does not recognize SFI or ATFS certified wood. By recognizing only a forest certification standard that is primarily found outside the U.S., this provides incentives to use foreign timber and excludes the use of 75% of certified U.S. timber. Importing foreign wood as opposed to using American lumber flies in the face of the goals laid out in E.O. 13514. Why does EPA exclusively use LEED certification in new building construction? Are there other available Green Building certification programs EPA could use? Can EPA's use, or the federal government's use, of one certification system influence the market and hinder the use of other available Green Building certification programs?**

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- 4. EPA's RE-Powering America's Land program encourages the development of renewable energy on current and formerly contaminated lands. Under this program, does EPA encourage the development of renewable energy (wind, solar, biomass, and geothermal) on contaminated land and former mine sites? On what type of contaminated lands does EPA support developing renewable energies under the RE-Powering America's Land program?**
- 5. Explain why the President's interagency task force on electronic waste recommended two standards? Does EPA endorse e-Stewards and the R2 standard? Please explain how each standard works. Is the federal government going to be recycling its overseas computers domestically or will they be recycled abroad? Wouldn't a third party international standard, which is backed up by third-party certification, be the model for international organizations?**

**Senator Jeff Sessions**

1. In October 2009, President Obama issued Executive Order 13514, which dealt with "Federal Leadership in Environmental, Energy, and Economic Performance." In that Executive Order, President Obama told all federal agencies, including the Defense Department, to take the "lead" on "creat[ing] a clean energy economy." He said the federal agencies must "reduce their greenhouse gas emissions," make greater use of "renewable energy" such as solar power, and consider the purchase of "alternative fuel vehicles." What was EPA's role in developing and implementing this Executive Order?
2. Has EPA calculated the total cost of implementing Executive Order 13514?
3. Are you aware whether any federal agency has determined the cost of implementing Executive Order 13514?

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**Senator Mike Crapo**

1. Through the Energy Independence and Security Act of 2007 signed into law by President Bush, the EPA was directed to implement the updated national Renewable Fuel Standard (known as RFS2). However the lack of qualified cellulosic bio-fuels on the market is a sore spot in an otherwise successful implementation of RFS2. The New York Times published a story in January pointing out that oil companies were paying a fine for not providing a fuel type that doesn't exist. That being said, it is also my understanding that there are a number of qualified products that are close to coming to market with the hope that there will be qualified C-RINs in 2012.

Sadly at least one of these qualified cellulosic bio-fuels is being held up unnecessarily by the EPA regulatory process. It just so happens that the company that produces this fuel, a renewable fuel oil derived from woody biomass, is also currently negotiating a contract with the US Navy at Naval Station Washington. This company has planned facility developments in Idaho with the potential of 450 jobs in a timber industry region of the state that desperately needs jobs.

What can the EPA do to alleviate the current market reality that there are not enough qualified products, and how can the EPA support the qualification of renewable fuels, such as oil derived from woody biomass, to qualify under the RFS?

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2. Within the RFS2 final rules, the EPA suggests that certain heating oils should qualify as renewable fuels. Can you comment on what the EPA is doing to qualify heating oil as a renewable fuel?
  3. Are there other rule-making steps or regulatory easements could be allowed to bring cellulosic bio-fuels to market quicker?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 10 2013

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Chairman, Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510-6175

Dear Chairman Boxer:

Thank you for your letter of May 3, 2012, requesting responses to questions for the record following the March 27, 2012, hearing before the Committee on Environment and Public Works entitled, "Oversight Hearing on EPA's Work with Other Federal Entities to Reduce Pollution and Improve Environmental Performance."

The responses to your questions are provided as an enclosure to this letter. Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Laura Gomez of my staff at (202) 564-5736.

Sincerely,

A handwritten signature in black ink, appearing to read "Arvin", is positioned above the printed name.

Arvin Ganesan  
Associate Administrator

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C. 20460**

**JAN 10 2013**

OFFICE OF CONGRESSIONAL AND  
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The Honorable James M. Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate  
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Sincerely,

Arvin Ganesan  
Associate Administrator

Enclosure

**UNITED STATES SENATE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

**“Oversight Hearing on EPA’s Work with Other Federal Entities to Reduce Pollution and Improve  
Environmental Performance”  
March 27, 2012**

**Hearing Questions for the Record**

**The Honorable Tom Carper**

**QUESTION:**

1. I applaud the military’s advancement of environmentally beneficial sources of clean energy generation or its bases, but I’d like to ask you specifically whether you have explored less traditional, more advances forms of clean energy generation beyond the legacy renewable. For example, fuel cell technology for stationary generation, such as those being built by American companies like Bloom Energy in my state of Delaware can be more flexible and reliable than intermittent renewable technologies, and can require fraction of the footprint.

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**RESPONSE:**

The EPA believes that the Department of Defense (DOD) could more appropriately answer this question. We have forwarded your question to DOD for its review.

**The Honorable James M. Inhofe**

**QUESTION:**

1. Describe for the committee some of the water conservation measures you have begun implementing in your/DOD facilities. How did you choose these conservation measures over others available?

**RESPONSE:**

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**QUESTION:**

2. EPA and the White House have increasingly focused efforts on maintaining and treating storm-water on site. I know there are a number of both legislative and executive orders that your facilities must comply with in managing storm-water. Can you please describe some of the challenges associated with additional storm-water controls as well as some of the choices that your facilities face in complying with storm-water mandates?

**RESPONSE:**

The EPA believes that controlling storm-water discharges from its own facilities and from other sources is critical for improving water quality. Section 438 of the Energy Independence and Security Act (EISA) of 2007 instructs federal agencies to "use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow" for any project with a footprint that exceeds 5,000 square feet. The EPA has a critical day-to-day role in managing its own facilities across the country to achieve storm-water management results.

The EPA also served in a policy role in helping to implement the provisions of Section 438. The EPA's Office of Water (OW) issued *Technical Guidance on Implementing the Storm-water Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act* on December 4, 2009.<sup>1</sup>

Implementation of Section 438 of the EISA can be achieved through the use of green infrastructure/low impact development (GI/LID) tools. Federal agencies can also use footprint or impervious cover reduction practices to reduce their stormwater impact. Green infrastructure practices include but are not necessarily limited to:

- Rain gardens, bioretention, and infiltration planters;
- Porous pavements;
- Vegetated swales and bioswales;
- Green roofs;
- Trees and tree boxes;

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<sup>1</sup> This guidance is available at [http://www.epa.gov/owow/NPS/lid/section438/pdf/final\\_sec438\\_eisa.pdf](http://www.epa.gov/owow/NPS/lid/section438/pdf/final_sec438_eisa.pdf).

- Pocket wetlands;
- Reforestation/revegetation using native plants;
- Protection and enhancement of riparian buffers and floodplains; and
- Rainwater harvesting for use (e.g., irrigation, Heating, Ventilation, and Air Conditioning (HVAC) make-up, non-potable indoor uses).

Some of the challenges associated with implementing on-site management of storm-water at federal facilities and from other sources can include:

- Engineering and design consultants may still be new to green infrastructure practices, so there may be a smaller pool of available contractors to construct green infrastructure projects.
- There may be a lack of a knowledgeable staff to review storm-water management plans using green infrastructure.
- There may be barriers in local government codes and ordinances that make it difficult to implement innovative green infrastructure practices.
- Although green infrastructure practices can be cost competitive or less expensive than traditional "grey" storm-water management approaches, they may be perceived as more costly because they include newer and less familiar technologies.

For example, practitioners may not recognize that green infrastructure avoids the costs of other infrastructure (e.g., ponds, pipes, paving, clearing, and grading) that can be reduced or eliminated when green infrastructure practices are used. Green infrastructure practices may benefit from economies of scale. For example, contractor fees for a small batch of pervious pavement for pilot projects may be more expensive than larger applications that will eventually be used once the projects are brought to scale.

**QUESTION:**

3. Currently, the EPA exclusively uses the LEED certification system for all new building construction. However, LEED currently does not include Life Cycle Analysis and does not recognize SFI or ATFS certified wood. By recognizing only a forest certification standard that is primarily found outside the U.S., this provides incentives to use foreign timber and excludes the use of 75% of certified U.S. timber. Importing foreign wood as opposed to using American lumber flies in the face of the goals laid out in the E.O. 13514. Why does EPA exclusively use LEED certification in new building construction? Are there other available Green Building certification programs EPA could use? Can EPA's use or the federal governments' use of one certification system influence the market and hinder the use of other available Green Building certification programs?

**RESPONSE:**

The EPA uses the LEED-New Construction (NC) certification system as just one of several tools to meet its sustainable building objectives. The LEED-NC system is the most widely accepted green building rating system in the U.S. market and provides a familiar vocabulary and framework for architects, engineers, construction contractors, landlords and lenders (for buildings leased via GSA). The EPA does not typically specify individual points that must be obtained under the LEED-NC green building rating system, except in the energy efficiency area. The EPA does not require the LEED-NC point related to sustainable wood products when it uses LEED-NC.

There are other green building certification programs in the U.S., including the Green Building Initiative's Green Globes system, and the International Living Building Institute's Living Building Challenge.

GSA provides approximately 60% of the EPA occupied space – offices and support space – via lease procurements with private landlords or in GSA owned buildings. While the EPA does own several laboratories and other facilities, and some on-going construction projects, the magnitude of these facilities and projects alone will probably not have a significant influence on the market share of green building rating systems in the U.S. But given the size of the entire federal real property inventory, the EPA believes there is substantial ability for the federal government to influence the market for green building certification programs.

**QUESTION:**

4. EPA's RE-Powering America's Land program encourages the development of renewable energy on current and formerly contaminated lands. Under this program, does EPA encourage the development of renewable energy (wind, solar, biomass, and geothermal) on contaminated land and former mine sites? On what type of contaminated lands does EPA support developing renewable energies under the RE-Powering America's Land program?

**RESPONSE:**

The EPA's *RE-Powering America's Land Initiative: Siting Renewable Energy on Contaminated Land and Mine Sites* aims to revitalize degraded land by promoting renewable energy as a productive end use. Our goal is to turn liabilities into assets for surrounding communities by fostering collaborative networks, developing tools, and providing site-specific technical assistance. The EPA is encouraging communities to consider all types of contaminated lands such as Superfund sites, brownfields, landfills, and abandoned mine sites. These sites can offer significant advantages over open space for renewable energy development. Development costs and timelines can be reduced because these sites are often served by existing infrastructure such as transmission lines, substations, roads, railways, and water. Many sites are already zoned for this purpose and, often, community partners are eager to see blighted areas put to use. Ultimately the decision on how the site will be reused should align with the community's vision and renewable energy may not be the best use for all sites. However, it makes sense to first look at potentially contaminated sites, closed landfills, and abandoned mining sites before developing open space for renewable energy projects. By reusing these sites for renewable energy production, we can decrease the amount of green space used for development, increase energy independence, protect public health and the environment, and provide economic benefits to local communities, including job creation.

**QUESTION:**

5. Explain why the President's interagency task force on electronic waste recommended two standards? Does EPA endorse e-Stewards and the R2 standard? Please explain how each standard works. Is the federal government going to be recycling its' overseas computers domestically or will they be recycled abroad? Wouldn't this party international standard, which is backed up by third-party certification, be the model for international organizations?

**RESPONSE:**

The President's Interagency Task Force recommended the two accredited third-party electronics recycling certification programs (Responsible Recycling (R2) Practices and e-Stewards®) because they combine a range of tools to help ensure used electronics are recycled in an environmentally sound manner into one package, including accredited third-party certification systems, best practices and standards, and increased knowledge and transparency of electronics companies and practices along the full recycling chain.

The EPA supports and will continue to push for further safe and protective recycling efforts and encourage improvements in best management practices for recyclers. The EPA believes that existing recycling certification programs such as R2 and e-Stewards® advance environmentally safe practices and include standards for use in third-party certification of such efforts.

Both the R2 Practices and e-Stewards® advance best management practices and offer a way to assess the environmental, worker health, and security practices of entities managing used electronics. Specifically, these certification programs are based on environmental standards that: maximize reuse and recycling; preclude disposal in landfills or incinerators; minimize exposure to human health or the environment; ensure safe management of materials by downstream handlers whether domestic or abroad; require functionality documentation for reusable equipment; and require destruction of all data in the equipment.

The EPA encourages all electronics recyclers to become certified to either of these two available certification programs, by demonstrating to an accredited, independent third-party auditor that they meet a specific standard(s) to safely recycle and manage electronics. The EPA also encourages customers of electronics recyclers to choose certified electronics recyclers. The EPA recognizes a responsibility to ensure that these programs stay strong, relevant, and are implemented properly. To this end, under the National Strategy for Electronics Stewardship, the EPA and GSA have committed to developing a baseline set of environmental criteria to be included, at a minimum, in electronics recycling standards that are to be used in managing the federal government's used electronics; and initiating a study of the implementation of the currently used electronics certification programs.

R2 and e-Stewards® are standard setting bodies. Standard setting bodies are responsible for developing a standard, making any interpretation of a standard, and providing guidance on implementing a standard.

These standard setting bodies work with the ASQ-ANSI National Accreditation Board (ANAB),<sup>2</sup> which assesses programs and abilities of certifying bodies (also known as "CB's or "registrars") that are interested in becoming accredited to certain standards. ANAB awards accreditation to CBs once they demonstrate that their certification program meets specific certification standards and that the CB has the appropriate knowledge, skills, and abilities to properly audit against the standards. ANAB ensures that the CBs maintain accreditation by conducting additional witness audits. Accreditation ensures the impartiality and competence of the CB and fosters confidence and acceptance of the CB.

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1. Not all standards that are audited against by certifying bodies require accreditation by ANAB. R2 and e-Stewards have determined that they will use only accredited certifying bodies to ensure the highest quality of auditing and certification.



Accredited CBs follow accreditation rules that are specific to the standard being accredited (e.g. R2 or e-Stewards®) as well as standards that are specific to how certifying bodies should perform. CBs develop and manage certification programs for individual standards; hire, train, manage and oversee auditors; and make all final certification decisions. CBs ensure facilities maintain certification by conducting surveillance audits. Auditors conduct the facility certification audits to determine conformance to the specific standard. As of June 2012, there are six CBs that are accredited to the electronics recycling certification standards. All six are accredited to the R2 standard; three are accredited to both R2 and e-Stewards®.

Facilities hire accredited CBs to become certified to the specific electronics recycling standard. Facilities demonstrate through facility audits and other means to skilled and trained auditors that they continually meet the specific environmental standards that are identified. For both R2 and e-Stewards® programs, it may take anywhere from three to ten months to achieve certification of a facility due to making necessary modifications to a facility's process and/or availability of the certifying body and auditor. As of September 2012, there are over 300 electronics recycling facilities certified by these certification programs worldwide.

Federal departments and agencies must comply with disposal regulations prescribed by GSA. GSA has also issued additional guidance on the specific topic of the disposal of used electronics equipment in the February 29, 2012 GSA Bulletin. "GSA BULLETIN FMR B-34: Disposal of Federal Electronic Assets," a copy of which can be found at: [http://www.gsa.gov/graphics/ogp/FMR\\_Bulletin\\_B-34.pdf](http://www.gsa.gov/graphics/ogp/FMR_Bulletin_B-34.pdf). The decision of whether to recycle overseas electronics domestically or abroad will likely depend on a number of factors, including the availability of domestic and overseas recycling facilities, and the cost of recycling overseas versus shipping waste back to the U.S. for domestic recycling.

Both R2 and e-Stewards® were the first standards of their kind worldwide. Since both became available, there has been increasing interest in international facilities becoming certified to them. Global electronics manufacturers companies are increasingly being held responsible for equipment they make and sell worldwide. In fact, as of September 2012, there are over 20 certified facilities located in other parts of the world, including Canada, Mexico, the United Kingdom, India, Malaysia, Singapore, Germany, Australia, New Zealand and China, with additional facilities seeking certification. Countries such as Canada, Ireland and Germany are developing their own electronics recycling standards that cover proper electronics management.

### **The Honorable Jeff Sessions**

#### **QUESTION:**

1. In October 2009, President Obama issued Executive Order 13514, "Federal Leadership in Environmental, Energy, and Economic Performance." In that Executive Order, President Obama told all federal agencies, including the Defense Department, to take the "lead" on creating a clean energy economy." He said the federal agencies must "reduce their greenhouse gas emissions," make greater use of "renewable energy" such as solar power, and consider the purchase of "alternative fuel vehicles." What was EPA's role in developing and implementing this Executive Order?

**RESPONSE:**

The EPA did not have a policy role in developing EO 13514. There are two areas where the EPA actions directly relate to the development of EO 13514:

Providing technical advice and policy recommendations to interagency groups that develop EO 13514 guidance, and working to make sure that EPA facilities, fleet, electronics management practices, and procurement practices meet EO 13514 requirements. Examples of advice and recommendations include:

- The EPA's Office of Air and Radiation worked with the Department of Energy and other federal agencies to develop a federal greenhouse gas inventory methodology.
- The EPA's Office of Sustainable Communities worked with the Department of Transportation (DOT) and the Department of Housing and Urban Development (HUD) to develop federal sustainable location guidance. EPA's Office of Administration and Resources Management (OARM) actively participates in interagency work groups that develop federal water conservation program guidance, green building program guidance, and other EO 13514-related guidance.

OARM manages the EPA's real property and fleet. It, therefore, manages the implementation of major portions of EO 13514, including energy and water conservation programs, green building programs, stormwater management requirements, the environmental performance of the EPA fleet, etc. The Office of Environmental Information plays a lead role meeting the green electronics and data center requirements in EO 13514, and OARM's Office of Acquisition Management oversees the green procurement program.

**QUESTION:**

2. Has EPA calculated the total cost of implementing Executive Order 13514?

**RESPONSE:**

Because EO 13514 requirements overlap with directives and mandates found in previous Executive Orders, the Energy Independence and Security Act, the Energy Policy Act of 2005, and other legal requirements, it would be difficult to calculate the incremental costs of implementing EO 13514 at the EPA. The agency would also have difficulty separating the staff resources related to general environmental policy development versus EO 13514 guidance work.

**QUESTION:**

3. Are you aware whether any federal agency has determined the cost of implementing Executive Order 13514?

**RESPONSE:**

The EPA is not aware of any federal agency that has determined the cost of implementing EO 13514.

**The Honorable Mike Crapo**

**QUESTION:**

1. Through the Energy Independence and Security Act of 2007 signed into law by President Bush, the EPA was directed to implement the updated national Renewable Fuel Standard (known as RFS2). However the lack of qualified cellulosic bio-fuels on the market is a sore spot in an otherwise successful implementation of RFS2. The New York Times published a story in January pointing out that oil companies were paying a fine for not providing a fuel type that doesn't exist. That being said, it is also my understanding that there are number of qualified products that are close to coming to market with the hope that these products will be qualified C-RINs in 2012.

Sadly at least one of these qualified cellulosic bio-fuels is being held up unnecessarily by the EPA regulatory process. It just so happens that the company that produces this fuel, a renewable fuel oil derived from woody biomass, is also currently negotiating a contract with the US Navy at the Naval Station Washington. This company has planned facility developments in Idaho with the potential of 450 jobs in a timber industry region of the state that desperately needs jobs.

What can the EPA do to alleviate the current market reality that there are not enough qualified products, and how can the EPA support the qualification of renewable fuels, such as oil derived from woody bio-mass, to qualify under the RFS?

**RESPONSE:**

The Energy Independence and Security Act of 2007 (EISA), in revising the Renewable Fuel Standard (RFS) program, put into place multiple provisions to encourage the development of advanced biofuels. The statute, for example, includes annual volume requirements for renewable fuel with a minimum volumetric requirement for biomass-based diesel and standards for advanced biofuels derived from cellulosic feedstock, subject to change each year based on the EPA's assessment of production capacity. A credit system (renewable identification numbers, or RINs, used to identify qualifying fuels) serves to increase the value of advanced renewable fuels and thereby spur their development. The statute also put in place requirements that any advanced renewable fuel, including cellulosic fuels, meet certain regulatory requirements, including specified lifecycle greenhouse gas (GHG) thresholds.

In the final rule adopting the amendments to the RFS program published in March 2010, the EPA approved pathways representing a range of feedstock sources, fuel production technologies, and fuel types. That final rule focused on the fuel pathways already in production or most likely to contribute significant volume of biofuels in the near future. It included cellulosic biofuel pathways from two prominent sources of woody material, slash and pre-commercial thinning. In the last two years, the EPA has made significant progress in evaluating additional feedstocks, fuel production technologies, and fuel types under the RFS program. The EPA has, for example, approved canola as a new feedstock and six other new fuel pathways through the petition process, and has released for public comment analysis on six other feedstocks (camelina, arundo donax, napiergrass, energy cane, sorghum, and palm oil). We have also initiated our analysis of renewable fuels based on pulp wood biomass as a feedstock, and understand there is a high level of interest and activity in the market

regarding its potential. We believe that reviewing such fuel pathways in accordance with statutory requirements, and, where appropriate, qualifying them for use in the program, is a critical way that the EPA can support the development of renewable fuels.

While such steps are important, the ultimate success of new biofuels in the marketplace hinges on multiple factors unrelated to the EPA, including access to financing, infrastructure limitations, and the cost competitiveness of the fuels. The EPA will continue to monitor the marketplace and will take steps, as appropriate, to help spur the development of the next generation of advanced biofuels.

**QUESTION:**

2. With the RFS2 final rules, the EPA suggests that certain heating oils should qualify as renewable fuels. Can you comment on what the EPA is doing to qualify heating oil as a renewable fuel?

**RESPONSE:**

We have just issued a direct final rulemaking that will expand the scope of renewable fuels that can qualify under the definition of heating oil to include fuel oil produced from qualifying renewable biomass that would be used to generate heat to warm buildings or other facilities where people live, work, recreate, or conduct other activities. Fuel oils used to generate process heat, power, or other functions are not included in the amended definition. Producers or importers of fuel oil that meets the amended definition of heating oil are also allowed to generate Renewable Identification Numbers (RINs), provided that the fuel oil meets the other requirements specified in the RFS regulations. Fuels that already meet the definition of heating oil in the RFS regulations are unaffected by the amendment to the rule.

**QUESTION:**

3. Are there other rule-making steps or regulatory easements could be allowed to bring cellulosic bio-fuels to market quicker?

**RESPONSE:**

As discussed above, the EPA plays an important but limited role in bringing cellulosic and other advanced biofuels to the market. Besides reviewing and analyzing new fuel pathways (see above response), the EPA is also required to issue regulations that set the annual volume standards for various renewable fuel volumes, including cellulosic, advanced, and total renewable fuels. Setting volumes and reviewing new pathways are the two key areas where the EPA can play a role in encouraging the development of cellulosic and other renewable fuels. Separately, in the course of implementing the RFS program, we are constantly looking for ways to streamline or otherwise modify the program in order to make the program more efficient, and to encourage the development of cellulosic and advanced biofuels. We anticipate that some of these changes will be proposed for public comment in upcoming RFS-related rulemakings.

AL 14-000-7609

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

DETTA ROBERT, MAJORITY STAFF DIRECTOR  
ZAK BART, MINORITY STAFF DIRECTOR

April 3, 2014

The Honorable Mathy Stanislaus  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

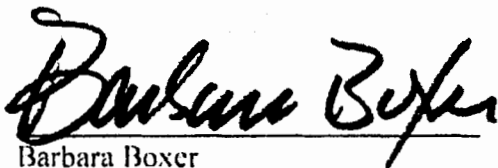
Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Committee on Environment and Public Works on March 6, 2014, at the hearing entitled, "Preventing Potential Chemical Threats and Improving Safety: Oversight of the President's Executive Order on Improving Chemical Facility Safety and Security." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

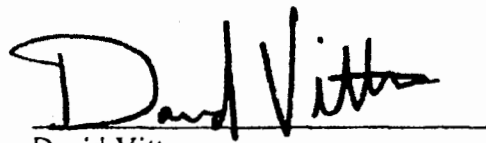
Enclosed are questions for you that have been submitted by Senators Boxer, Markey, and Vitter for the hearing record. Please submit your answers to these questions by COB April 17, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov). To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Jason Albritton of the Majority Staff at (202) 224-8832, or Bryan Zumwalt of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer  
Chairman



David Vitter  
Ranking Member

**Environment and Public Works Committee Hearing**  
**March 6, 2014**  
**Follow-Up Questions for Written Submission**

Questions for Stanislaus

Questions from:

Senator Barbara Boxer

1. Executive Order 13650, Section 4(a) required the Working Group to deploy, within 45 days, a pilot program, involving the EPA, OSHA, DHS, and any other appropriate agency, to validate best practices and to test innovative methods for Federal interagency collaboration regarding chemical facility safety and security, including innovative and effective methods of collecting, storing, and using facility information, stakeholder outreach, inspection planning, and, as appropriate, joint inspection efforts. With respect to the pilot program, which was deployed in EPA Region 2, please identify the best practices that are being validated and innovative methods that are being tested.
2. Executive Order 13650, Section 2(c) requires the Working Groups to provide, within 270 days, a status report to the President on the efforts to implement the EO. Given that this status report will identify a number of plans and proposals that will be implemented after the status report is due, does the Working Group intend to continue to meet and provide subsequent status reports to the President on the implementation of those plans and proposals? Will EPA commit to providing quarterly status updates to this Committee on the implementation of the Executive Order actions?

**Question with Senator Edward J. Markey**

3. Mr. Stanislaus, Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions whose deadlines for completion have passed, please indicate: (1) whether the action was completed; (2) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, (3) if not, indicate the date on which the action will be completed. In each response, describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.
  - a. The plan to support and further enable efforts by State regulators, State, local, and tribal emergency responders, chemical facility owners and operators, and local and tribal communities to work together to improve chemical facility safety and security. (Sec. 3(a); Within 135 days).
  - b. The assessment conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).
  - c. The assessment conducted by the Secretary of Homeland Security into the feasibility of sharing Chemical Facility Anti-Terrorism Standards (CFATS) data with SERCs, TEPCs, and LEPCs on a categorical basis. (Sec. 3(c); Within 90 days).

- d. A list of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).
- e. The analysis, including recommendations, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).
- f. The proposal for a coordinated, flexible data-sharing process which can be utilized to track data submitted to agencies for federally regulated chemical facilities, including locations, chemicals, regulated entities, previous infractions, and other relevant information (Sec. 5(b); Within 180 days).
- g. The recommendations for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5(c); Within 180 days).
- h. The options developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).
- i. The list of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).
- j. The determination of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the plan, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).
- k. The list of chemicals, including poisons and reactive substances, that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).
- l. The list of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days).

**Senator Edward J. Markey**

1. In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology (IST). Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements:

- "The Administration supports consistency of IST approaches for facilities regardless of sector."
  - "The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements."
  - "For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods."
  - "The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors."
- a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
  - b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration's new policy)?



**Senator David Vitter**

1. I would appreciate a yes or no answer on where you and the Agency currently stand with regards to regulating ammonium nitrate under the Clean Air Act RMP program. Do you and the Agency still stand by your response to Senator Boxer's April 30<sup>th</sup> letter on the incident in West, TX that ammonium nitrate fertilizer does not meet the criteria for substances regulated under the Clean Air Act RMP program?
2. The RMP program uses models in order to assess accidental chemical release risks. These models are designed specifically for air releases, not explosions. Given that ammonium nitrate is not released into the air like other RMP managed chemicals, if EPA were to regulate ammonium nitrate under the RMP program, would it have to totally redo or create new models?
3. You mentioned in your testimony, the President's Executive Order required the working group to develop a pilot program to "validate best practices and to test innovative methods for Federal interagency collaboration." How long do you believe we need to allow this pilot program to play out in order to use its results to inform policy changes or new rules and regulations?
4. The current RMP program regulates approximately 13,000 RMP facilities nationwide including family owned and operated businesses like bakeries, food storage and processing facilities, dry cleaners, hair stylists, and distribution warehouses. How do you think all these small businesses might respond to federal mandates for IST?
5. Does EPA have the resources to add new compliance requirements to regulate IST under RMP?
6. Does EPA have staff qualified to evaluate this wide range of processes and facilities for purposes of an IST requirement?
7. Just a year ago, the EPA IG found that "15 of the 45 RMP inspectors nationwide received inspector credentials without documentation indicating that they met minimum training requirements. Further, six of the 12 supervisors did not meet minimum training requirements. EPA's management controls did not detect or prevent the cases of missed or undocumented training. Identified also were weaknesses in controls included limitations in training tracking systems and a lack of procedures to ensure that supervisors met their training requirements. Also, contracts and cooperative agreements for inspection services did not include training requirements and EPA guidance did not establish minimum guidelines for the scope of inspections. Further, EPA did not have a process to monitor the quality of inspections. And generally, inspection reports did not explain the extent to which the inspectors reviewed specific elements of a covered process to determine compliance." Can you please explain what steps EPA has taken to address these concerns? Given the current shortcomings within the RMP and its inspectors, how can creating any new complicated regulatory requirements prior to fixing any previous issues possibly provide greater safety and more compliance?
8. If IST were to be mandated in regulations, how will it be measured?
9. The EO was specifically created to get agencies to work together since the tragic incident in West, Texas – what progress has been made by your agencies/departments to help identify outliers? How many outliers have you identified since the West, Texas incident?
10. Has the Compliance Assistance part of OECA been involved with the listening sessions and what are they doing to help?

11. Is EPA working with the SBA and the US Chamber to reach out to smaller communities/businesses?
12. Has EPA reached out to the regulated community on any potential changes to the LEPC program?
13. Perhaps one of the most helpful things that can be done to prevent future accidents like the explosion in West, TX is to ensure that the entire regulated community has an understanding of existing rules and regulations and understands how to comply. What is EPA doing to help in compliance assistance and awareness and marketing compliance guidance material? Have you increased compliance assistance activities since West?
14. Or, you can try the approach that RMP is intended to decrease the risk of accidental airborne releases of chemicals that could harm the public. Assuming an IST requirement were implemented under RMP, would such a requirement be allowed to consider workplace safety impacts of the technologies? What about impacts of security from terrorism? Or on transportation of chemicals to and from the facility? Aren't these all areas outside of EPS jurisdiction under RMP, yet factors that a facility considers when doing a holistic review of its processes? Why then would an IST component of RMP be useful?
15. Does EPA believe that the facilities in West, TX and West Virginia were compliant with all existing rules and regulations at the federal and state level? If not, can you please list what rules and regulations were violated? If in fact rules and regulations were not followed, would it be fair to say that ensuring facilities were compliant with current rules could be just as if not more effective than creating additional rules?
16. What would you estimate would be the resources required for a regulatory agency to evaluate and identify adequate IST considerations for all chemical processes and facilities?
17. How would small companies such as West Texas and Freedom Industries perform IST evaluations given the complexity and size of such an analysis?
18. How would an IST regulation reach companies and plant sites that are not aware of, have chosen not to comply with, or lack the understanding of what is already in the regulations?
19. How do you view IST as the method to improve safety? The examples given to date in the EO 13650 and in statements by the CSB discuss incidents that were the result of lack of enforcement of existing regulations. Would it not be more cost effective to invest in outreach, educational training, cooperative industry-government initiatives, and enforcement of existing regulations than to develop complex and impracticable new regulations?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 28 2014

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Chairman Boxer:

Thank you for the opportunity to respond to the Questions for the Record following the March 6, 2014, hearing entitled "Preventing Potential Chemical Threats and Improving Safety: Oversight of the President's Executive Order on Improving Chemical Facility Safety and Security." The responses to the questions are enclosed. I hope that this information is helpful to you and the members of the Committee.

If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at [levine.carolyn@epa.gov](mailto:levine.carolyn@epa.gov) or (202) 564-1859.

Sincerely,

A handwritten signature in black ink, which appears to read "Laura Vaught", is written over the typed name.

Laura Vaught  
Associate Administrator

Enclosure

**U.S. Environmental Protection Agency  
Responses to Questions for the Record from the  
Senate Environment and Public Works Committee Hearing  
March 6, 2014**

**Questions for Assistant Administrator Stanislaus**

**Questions from Chairman Barbara Boxer**

1. Executive Order 13650, Section 4(a) required the Working Group to deploy, within 45 days, a pilot program, involving the EPA, OSHA, DHS, and any other appropriate agency, to validate best practices and to test innovative methods for Federal interagency collaboration regarding chemical facility safety and security, including innovative and effective methods of collecting, storing, and using facility information, stakeholder outreach, inspection planning, and, as appropriate, joint inspection efforts. With respect to the pilot program, which was deployed in EPA Region 2, please identify the best practices that are being validated and innovative methods that are being tested.

**ANSWER:** As directed by the Presidential Executive Order on *Improving Chemical Facility Safety and Security* (EO 13650), federal agencies launched a Working Group to enhance coordination among agencies, and across all levels of state and local government, to strengthen information sharing efforts and expand outreach to the chemical industry, emergency managers, first responders and other stakeholders.

The Working Group launched a pilot program in August of 2013, in New York and New Jersey to evaluate best practices and test innovative methods for interagency collaboration on chemical facility safety and security. Under the pilot program, the Working Group is formulating an understanding of chemical facility risk in that region, ensuring that local responders have access to key information and evaluating processes and protocols for information sharing. The pilot is also working to improve coordination of inspections by sharing inspection schedules, cross-training inspectors, and supporting inter-agency referrals of possible regulatory non-compliance as we work toward the development of a unified federal approach for identifying and responding to risks identified in chemical facilities.

2. Executive Order 13650, Section 2(c) requires the Working Groups to provide, within 270 days, a status report to the President on the efforts to implement the EO. Given that this status report will identify a number of plans and proposals that will be implemented after the status report is due, does the Working Group intend to continue to meet and provide subsequent status reports to the President on the implementation of those plans and proposals? Will EPA commit to providing quarterly status updates to this Committee on the implementation of the Executive Order actions?

**ANSWER:** Yes. EPA will continue to provide the Committee regular updates on actions implemented under the Executive Order.

### Questions from Senator Edward J. Markey

3. Mr. Stanislaus, Executive Order 13650 ordered a number of specific actions to be completed by the Working Group. For the following list of actions whose deadlines for completion have passed, please indicate: (1) whether the action was completed; (2) if so, provide a copy of the plan, assessment, list, analysis, recommendations, proposal, options, determination, Request for Information, or Solicitation of Public Input/Comment; and, (3) if not, indicate the date on which the action will be completed. In each response, describe how the Working Group had addressed each specific element within each of the specific actions required by the Executive Order.
  - a. The **plan** to support and further enable efforts by State regulators, State, local, and tribal emergency responders, chemical facility owners and operators, and local and tribal communities to work together to improve chemical facility safety and security. (Sec. 3(a); Within 135 days).
  - b. The **assessment** conducted by the Attorney General, through the head of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), into the feasibility of sharing data related to the storage of explosive materials with State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), Tribal Emergency Planning Committees (TEPCs). (Sec. 3(b); Within 90 days).
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  - d. A **list** of any changes determined to be needed to existing memorandums of understanding (MOUs) and processes between EPA and CSB, ATF and CSB, and the Occupational Safety and Health Administration (OSHA) and CSB for timely and full disclosure of information. Please provide copies of the current drafts of the revised MOUs; or, if it was deemed to be appropriate by the Working Group, a draft of the single model MOU developed with CSB in lieu of existing agreements. (Sec. 4(c); Within 90 days).
  - e. The **analysis**, including **recommendations**, on the potential to improve information collection by and sharing between agencies to help identify chemical facilities which may not have provided all required information or may be non-compliant with Federal requirements to ensure chemical facility safety. (Sec. 5(a); Within 90 days).
  - f. The **proposal** for a coordinated, flexible data-sharing process which can be utilized to track data submitted to agencies for federally regulated chemical facilities, including locations, chemicals, regulated entities, previous infractions, and other relevant information (Sec. 5(b); Within 180 days).
  - g. The **recommendations** for possible changes to streamline and otherwise improve data collection to meet the needs of the public and Federal, State, local, and tribal agencies (including those charged with protecting workers and the public), consistent with the Paperwork Reduction Act and other relevant authorities, including opportunities to lessen the reporting burden on regulated industries. (Sec. 5(c); Within 180 days).

- h. The **options** developed for improved chemical facility safety and security that identifies improvements to existing risk management practices through agency programs, private sector initiatives, Government guidance, outreach, standards, and regulations. (Sec. 6(a)(i); Within 90 days).
- i. The **list** of potential regulatory and legislative proposals to improve the safe and secure storage, handling, and sale of ammonium nitrate and identify ways in which ammonium nitrate safety and security can be enhanced under existing authorities. (Sec. 6(b); Within 90 days).
- j. The **determination** of whether the EPA's Risk Management Program (RMP) and the OSHA's Process Safety Management Standard (PSM) can and should be expanded to address additional regulated substances and types of hazards, and the **plan**, including a timeline and resource requirements, to expand, implement, and enforce the RMP and PSM in a manner that addresses the additional regulated substances and types of hazards. (Sec. 6(c); Within 90 days).
- k. The **list** of chemicals, including poisons and reactive substances that should be considered for addition to the CFATS Chemicals of Interest list. (Sec. 6(d); Within 90 days).
- l. The **list** of changes that need to be made in the retail and commercial grade exemptions in the PSM Standard and the Request for Information designed to identify issues related to modernization of the PSM Standard and related standards necessary to meet the goal of preventing major chemical accidents. (Sec. 6(e); Within 90 days).

**ANSWER:** Helping to ensure chemical facility safety and security is a shared commitment, and the Administration has engaged with a variety of industry and state and local government stakeholders across the country to help identify ways to improve the safety and security of chemical facilities and reduce the risks of hazardous chemicals to owners and operators, workers, communities, emergency managers and first responders. As directed by the Presidential Executive Order on *Improving Chemical Facility Safety and Security* (EO 13650), federal agencies launched a Working Group to enhance coordination among agencies, and across all levels of state and local government, to strengthen information sharing efforts and expand outreach to the chemical industry, emergency managers, first responders and other stakeholders. The Working Group issued Progress Updates in December 2013, and February 2014, regarding actions under the Executive Order which can be found at: <https://www.osha.gov/chemicalexecutiveorder/index.html>. A Report to the President that addresses major areas of action, based in part on milestones described in the Progress Updates, will be submitted by the end of May 2014. The Working Group can provide further details on the actions taken under the EO after transmitting the Report to the President.

- 4. In 2009, during consideration of H.R. 2868, the Administration went through an inter-agency process to establish policy principles related to the use of inherently safer technology (IST). Those principles are pasted below, and were delivered in Congressional testimony by Peter S. Silva, then-Assistant Administrator for Water at EPA as well as a witness representing the Department of Homeland Security. While these principles related to a piece of legislation that was not enacted and thus also not referred to in E.O. 13650, some of the principles do represent general policy statements:

- "The Administration supports consistency of IST approaches for facilities regardless of sector."
- "The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' site security plans. Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements."
- "For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the site security plan. The entity should be authorized to provide recommendations on implementing IST, but it would not require facilities to implement the IST methods."
- "The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy. DHS, in coordination with EPA, would develop an IST implementation plan for timing and phase-in at water facilities designated as high-risk chemical facilities. DHS would develop an IST implementation plan for high-risk chemical facilities in all other applicable sectors."

- 
- a. Does the Administration continue to believe that all high-risk chemical facilities should assess IST methods and report the assessment to the federal government? If not, why not (and please provide copies of documents that establish the Administration's new policy)?
  - b. Does the Administration continue to believe that regulators should have the authority to direct the highest risk chemical facilities to implement IST methods if such methods enhance overall security, are feasible, and, in the case of water sector facilities, consider public health and environmental requirements? If not, why not (and please provide copies of documents that establish the Administration's new policy)?

**ANSWER:** Consideration and adoption of safer technologies and alternatives at high risk chemical facilities can be important steps to reduce risks. As part of the implementation of EO 13650, the Working Group solicited public comment on options, including the use of safer technologies, to encourage risk reduction at chemical facilities and is currently evaluating those comments and potential next steps.

#### **Questions from Senator David Vitter**

1. I would appreciate a yes or no answer on where you and the Agency currently stand with regards to regulating ammonium nitrate under the Clean Air Act RMP program. Do you and the Agency still stand by your response to Senator Boxer's April 30th letter on the incident in West, TX that ammonium nitrate fertilizer does not meet the criteria for substances regulated under the Clean Air Act RMP program?

**ANSWER:** EPA supports the views expressed in its April 30<sup>th</sup> response to Chairman Boxer. Ammonium nitrate fertilizer is not intended to function as an explosive and would not have been regulated under the original RMP list rule.

2. The RMP program uses models in order to assess accidental chemical release risks. These models are designed specifically for air releases, not explosions. Given that ammonium nitrate is not released into the air like other RMP managed chemicals, if EPA were to regulate ammonium nitrate under the RMP program, would it have to totally redo or create new models?

**ANSWER:** As part of the implementation of Executive Order 13650, EPA, OSHA and DHS are exploring options for improving the management of chemical hazards, including those associated with the safe handling and storage of ammonium nitrate. The models provided by EPA to assess chemical risks under the RMP program are designed both for toxic air releases and explosion (63 of the 140 chemicals currently regulated under the RMP program were listed because of the potential to form explosive vapor clouds).

3. You mentioned in your testimony, the President's Executive Order required the working group to develop a pilot program to "validate best practices and to test innovative methods for Federal interagency collaboration." How long do you believe we need to allow this pilot program to play out in order to use its results to inform policy changes or new rules and regulations?

**ANSWER:** As directed by the Presidential Executive Order on *Improving Chemical Facility Safety and Security* (EO 13650), federal agencies launched a Working Group to enhance coordination among agencies, and across all levels of state and local government, to strengthen information sharing efforts and expand outreach to the chemical industry, emergency managers, first responders and other stakeholders. Preliminary findings and lessons learned from the pilot program and the path forward will be discussed in the Report to the President.

4. The current RMP program regulates approximately 13,000 RMP facilities nationwide including family owned and operated businesses like bakeries, food storage and processing facilities, dry cleaners, hair stylists, and distribution warehouses. How do you think all these small businesses might respond to federal mandates for IST?

**ANSWER:** Although a number of bakeries, food storage, processing, and distribution facilities are regulated under the RMP program, there are no dry cleaning or hair stylist facilities covered under the regulation. As part of the implementation of EO 13650, the Working Group solicited public comment on options, including the use of safer technologies, to encourage risk reduction at chemical facilities and is currently evaluating those comments and potential next steps. As a general matter, federal regulatory actions are implemented through the notice and comment rulemaking process, and as necessary, include convening of a small business panel under the Small Business Regulatory Flexibility Act (SBREFA) to solicit views regarding potential small business impacts.

5. Does EPA have the resources to add new compliance requirements to regulate IST under RMP?

**ANSWER:** As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps. EPA supports the FY 2015 budget request for the RMP program.



6. Does EPA have staff qualified to evaluate this wide range of processes and facilities for purposes of an IST requirement?

**ANSWER:** As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

7. Just a year ago, the EPA IG found that "15 of the 45 RMP inspectors nationwide received inspector credentials without documentation indicating that they met minimum training requirements. Further, six of the 12 supervisors did not meet minimum training requirements. EPA's management controls did not detect or prevent the cases of missed or undocumented training. Identified also were weaknesses in controls included limitations in training tracking systems and a lack of procedures to ensure that supervisors met their training requirements. Also, contracts and cooperative agreements for inspection services did not include training requirements and EPA guidance did not establish minimum guidelines for the scope of inspections.

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Further, EPA did not have a process to monitor the quality of inspections. And generally, inspection reports did not explain the extent to which the inspectors reviewed specific elements of a covered process to determine compliance." Can you please explain what steps EPA has taken to address these concerns? Given the current shortcomings within the RMP and its inspectors, how can creating any new complicated regulatory requirements prior to fixing any previous issues possibly provide greater safety and more compliance?

**ANSWER:** The EPA concurred with the recommendations made by the Office of Inspector General (OIG) and committed to corrective actions. The EPA has already revised its credentialing process for RMP inspectors to help ensure minimum training requirements are met and also strengthened both initial training and refresher training for inspectors. Cooperative agreements for Senior Environmental Employee inspectors have been revised to include a requirement that all EPA required training applicable to the position be listed in the position description. A number of other actions recommended by the OIG are currently being implemented.

8. If IST were to be mandated in regulations, how will it be measured?

**ANSWER:** As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

9. The EO was specifically created to get agencies to work together since the tragic incident in West, Texas, what progress has been made by your agencies/departments to help identify outliers? How many outliers have you identified since the West, Texas incident?

**ANSWER:** The Department of Homeland Security (DHS) provided EPA with a data extract from the Chemical Facility Anti-Terrorism Standards (CFATS) Top Screen database containing

the identity of facilities that submitted a CFATS Top Screen to DHS for any RMP chemical without indicating an RMP identification number on the submission. Based upon this information, the EPA contacted potential outliers and has identified approximately 15 facilities that should have submitted risk management plans to EPA.

10. Has the Compliance Assistance part of OECA been involved with the listening sessions and what are they doing to help?

**ANSWER:** Although the EPA's Office of Enforcement and Compliance Assurance was not actively engaged in Executive Order listening sessions, they have been involved in agency deliberations regarding the path forward to help improve the safety and security of chemical facilities.

11. Is EPA working with the SBA and the US Chamber to reach out to smaller communities and businesses?

**ANSWER:** Federal agencies launched a Working Group to enhance coordination among agencies, and across all levels of state and local government, to strengthen information sharing efforts and expand outreach to the chemical industry, emergency managers, first responders and other stakeholders. Listening Sessions convened by the Working Group solicited input from a broad range of stakeholders including local communities and small business representatives.

12. Has EPA reached out to the regulated community on any potential changes to the LEPC program?

**ANSWER:** Federal agencies launched a Working Group to enhance coordination among agencies, and across all levels of state and local government, to strengthen information sharing efforts and expand outreach to the chemical industry, emergency managers, first responders and other stakeholders. Listening Sessions convened by the Working Group solicited input from a broad range of stakeholders, including the regulated community.

13. Perhaps one of the most helpful things that can be done to prevent future accidents like the explosion in West, TX is to ensure that the entire regulated community has an understanding of existing rules and regulations and understands how to comply. What is EPA doing to help in compliance assistance and awareness and marketing compliance guidance material? Have you increased compliance assistance activities since West?

**ANSWER:** One of the initial actions taken after issuance of the EO was the development and August 30, 2013, release by EPA, the Occupational Safety and Health Administration (OSHA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of a chemical advisory that provides information to communities, workers, first responders and commercial sectors on the hazards of ammonium nitrate storage, handling, and management. We plan to update this advisory based upon feedback we have received from stakeholders. Further, in February of 2014, the Assistant Secretary of Labor for Occupational Safety and Health signed a letter that is being circulated by agricultural trade associations to provide more than 7,000 employers with legal

requirements and best practice recommendations for safely storing and handling ammonium nitrate.

14. Or, you can try the approach that RMP is intended to decrease the risk of accidental airborne releases of chemicals that could harm the public. Assuming an IST requirement were implemented under RMP, would such a requirement be allowed to consider workplace safety impacts of the technologies? What about impacts of security from terrorism? Or on transportation of chemicals to and from the facility? Aren't these all areas outside of EPA jurisdiction under RMP, yet factors that a facility considers when doing a holistic review of its processes? Why then would an IST component of RMP be useful?

ANSWER: As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

15. Does EPA believe that the facilities in West, TX and West Virginia were compliant with all existing rules and regulations at the federal and state level? If not, can you please list what rules and regulations were violated? If in fact rules and regulations were not followed, would it be fair to say that ensuring facilities were compliant with current rules could be just as if not more effective than creating additional rules?

ANSWER: EPA has not determined whether the facilities in West, Texas or West Virginia were compliant with all existing federal and state rules and regulations because investigations of the West, Texas and West Virginia Elk River incidents remain ongoing.

16. What would you estimate would be the resources required for a regulatory agency to evaluate and identify adequate IST considerations for all chemical processes and facilities?

ANSWER: As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

17. How would small companies such as West Texas and Freedom Industries perform IST evaluations given the complexity and size of such an analysis?

ANSWER: As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

18. How would an IST regulation reach companies and plant sites that are not aware of, have chosen not to comply with, or lack the understanding of what is already in the regulations?

ANSWER: As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps.

19. How do you view IST as the method to improve safety? The examples given to date in the EO 13650 and in statements by the CSB discuss incidents that were the result of lack of enforcement of existing regulations. Would it not be more cost effective to invest in outreach, educational training, cooperative industry-government initiatives, and enforcement of existing regulations than to develop complex and impracticable new regulations?

**ANSWER:** As part of the implementation of EO 13650, the Working Group solicited public comment on options to encourage consideration of safer technologies and alternatives at chemical facilities and is currently evaluating those comments and potential next steps. Multiple tools and methods can be used to help improve chemical facility safety including training, outreach, and technical assistance. For more on EPA technical assistance for facilities see: <http://www2.epa.gov/rmp/guidance-facilities-risk-management-programs-rmp>.

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AL 12-001-1463

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA FORTER, MAJORITY STAFF DIRECTOR  
RUTH VAN MARY, MINORITY STAFF DIRECTOR

July 12, 2012

Dr. John Vandenberg  
Director, RTP Division  
U.S. Environmental Protection Agency  
Office of Research and Development  
National Center for Environmental Assessment, B2-13-01  
109 T.W. Alexander Dr.  
Research Triangle Park, NC 27709

Dear Dr. Vandenberg:

On behalf of the Senate Committee on Environment and Public Works, we invite you to testify before the Committee at a hearing entitled, "The Latest Science on Lead's Impacts on Children's Development and Public Health." The hearing will be held on Thursday, July 12, 2012, beginning at 10:00 AM in Room 406 of the Dirksen Senate Office Building. The purpose of this hearing is to examine the best available science on lead's impacts on children's mental and physical development and on public health.

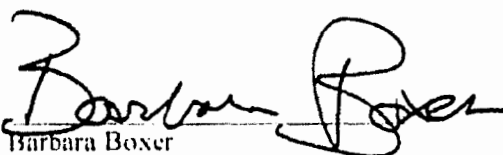
In order to maximize the opportunity to discuss this matter with you and the other witnesses, we ask that your oral testimony be limited to five minutes. Your written testimony can be comprehensive and will be included in the printed record of the hearing in its entirety, together with any other materials you would like to submit.

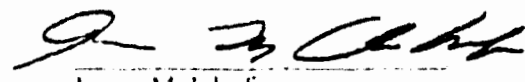
To comply with Committee rules, please provide 100 double-sided copies of your testimony at least 48 hours in advance of the hearing to the Committee at the following address: 410 Dirksen Senate Office Building, Washington, DC 20510-6175. To ensure timely delivery, the copies of testimony must be hand delivered to 410 Dirksen. Please do not send packages through FedEx, U.S. Mail, or overnight delivery services, because they will be subject to offsite security measures which will delay delivery. Please also email a copy of your testimony (in both MS Word and as a PDF file) to the attention of Mara Stark-Alcala, [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov), at least 48 hours in advance. This email address will be used later to quickly finalize hearing transcripts.

If you plan to use or refer to any charts, graphs, diagrams, photos, maps, or other exhibits in your testimony, please deliver or send one identical copy of such material(s), as well as 100 reduced (8.5" x 11") copies to the Committee, to the attention of Mara Stark-Alcala, [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov), at the above address at least 48 hours in advance of the hearing. Exhibits or other materials that are not provided to the Committee by this time cannot be used for the purpose of presenting testimony.

If you have any questions or comments, please feel free to contact Grant Cope of the Committee's Majority staff at 202-224-8832 or Dimitri Karakitsos of the Committee's Minority staff at 202-224-6176.

Sincerely,

  
Barbara Boxer  
Chairman

  
James M. Inhofe  
Ranking Member

AL 14-001-2727

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6176

CLIFFORD PUGH, MAJORITY STAFF DIRECTOR  
224 BOWEN REPUBLICAN STAFF DIRECTOR

March 5, 2014

Chris Grundler  
Director, Office of Transportation and Air Quality  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

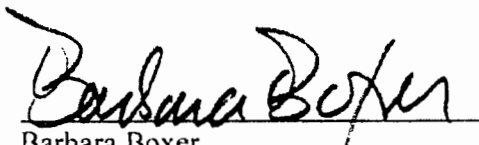
Dear Director Grundler:

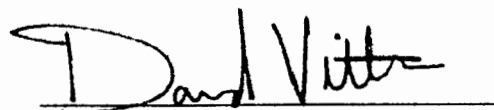
Thank you for appearing before the Committee on Environment and Public Works on December 11, 2013, at the hearing entitled, "Oversight Hearing on Domestic Renewable Fuels." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

Enclosed are questions for you that have been submitted by Senators Boxer, Baucus, Carper, Cardin, Gillibrand, Vitter, Wicker, and Fischer for the hearing record. Please submit your answers to these questions by COB March 19, 2014, to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov). To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Joe Mendelson of the Majority Staff at (202) 224-8832, or Margaret Caravelli of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,

  
Barbara Boxer  
Chairman

  
David Vitter  
Ranking Member

**Environment and Public Works Committee Hearing  
December 11, 2013  
Follow-Up Questions for Written Submission**

**Questions for Grundler**

Questions from:

**Senator Barbara Boxer**

1. The Renewable Fuel Standard was designed, in part, to incent infrastructure investments in renewable fuels use by creating a stable and expanding market for such fuels. How will EPA's Proposed 2014 Volume Standards incentivize expanded renewable fuels infrastructure in the U.S.?
  2. Can you please explain the specific steps the EPA has taken to address individual cases of RIN fraud? What agency's actions have been taken to prevent future cases of RIN fraud?
-

**Senator Max Baucus**

1. Did EPA review the change in market conditions for the oil sector or the renewable fuel sector if your proposed 2014 blending targets were to be adopted? What are the results of these analyses?
  2. How do you believe your proposed 2014 blending targets will affect the status of infrastructure investments to deliver renewable fuels?
  3. How does EPA analyze the effects of the interaction between its annual blending targets, review and approval of new feedstock pathways, and other complementary federal programs such as loans, loan guarantees, and grants from the Departments of Energy and Agriculture?
  4. What has EPA done to address individual cases of RIN fraud and other potential manipulation in the RIN market as well as what systemic steps you have taken to address these issues?
  5. Is it legal to use E15 in a motorcycle?
-



**Senator Thomas R. Carper**

- 1. Mr. Grundler, can you tell the Committee what the EPA has done to increase transparency in the RIN markets? Does the EPA intend to do more? Are there tools that could help the agency increase transparency that are not legally available to you now?**
- 2. Mr. Grundler, under EPA's analysis in the recent 2014 proposed rule, the EPA has determined there is not the available infrastructure to handle the increased levels of biofuels required under the Clean Air Act. If the EPA adjusts the RFS downward to meet the current infrastructure, what drives new investments in infrastructure to handle future volume requirements? Can you tell the Committee, how does this nation get past the blendwall under the current proposal? How can this country incentivize the increased investments in E85 pumps, E15 pumps and vehicles that are optimized for future ethanol blends?**
- 3. Currently, car companies are starting to make adjustments to meet Tier 3 emissions standards. Can you tell the Committee if the EPA is working with industry to incentivize the production of vehicles that can run on future ethanol blends? If not, why not?**
- 4. Many small and mid-range refineries do not have the capabilities to blend and must buy many or all of their RINs on the market. As a result, high and volatile RIN prices have had a large impact on these refineries. As the RFS continues, what can be done – if anything - to assist these smaller refineries?**

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- 5. Do you believe your proposal will impact future advanced biofuel investments – if not, why not?**

Senator Benjamin L. Cardin

1. Are the challenges of the blend wall the primary driver behind the proposed reduction in 2014 RVO (renewable volume obligations)?
  - a. Is ethanol the fuel additive that causes blend wall problems?
  - b. Do biodiesel and advanced "drop-in" biofuels contribute to the blend wall problems?
2. Since the advanced biofuel industry generated 3.2 billion gallons worth of RINs in 2013 and most of these fuels do not contribute to the blend wall problem, why is EPA proposing to reduce the advanced biofuel volumes for 2014 to 2.2 billion gallons?
3. Could you explain how the Monte Carlo system EPA proposes will reflect the actual gallons being produced?
4. Will the mean you are proposing most likely always under estimate actual production?
5. If biomass based diesel pool produced around 1.7 billion gallons why is EPA proposing the mandates to be kept at 1.28 for both 2014 and 2015?
6. Why has EPA been struggled over the last several years in moving new pathways for biofuels as well as updating the general rules governing the biofuels industry?
7. What happens to the proposed cellulosic mandate for 2014 if EPA completes its Pathways Two Rule after you announce the RVOs?
  - a. Won't millions of gallons have been added that are known to be coming but are not included in the target?
8. What consideration is EPA giving to the negative market signals to advanced biofuel industry investment community that may result from the proposed reductions to the advanced biofuel volumes for 2014?
9. If the blend wall is the primary driver for the proposed RVO, why is EPA cutting 40% for Advanced Biofuels off the 2007 statutory requirement and less than 10% for corn ethanol?
10. Is the conventional ethanol sectors now mature enough at the E10 blend wall to no longer need the artificial support of a RFS mandate?
11. Why doesn't the EISA waiver process (Section 211(o)(7)(B)) need to be amended to better protect livestock and poultry producers by having hard triggers on feedstock supplies and prices?
12. What guarantees can EPA provide consumers who own and operate lawnmowers, generators, boats and cars that they will not mis-fuel?
13. As the statute requires increased volumes of ethanol in the fuel supply, what guarantees will consumers have that they will be able to purchase E0 and E10 at an affordable price?
14. Do you feel that a label simply notifying the consumer of an E15 pump, a label that doesn't even warn of the potential hazards of misfueling, provides the adequate assurances against misfueling?

15. If the majority of ethanol plants are failing to achieve the greenhouse gas reduction for ethanol, how confident are you that the industry will meet future greenhouse gas reduction requirements?
  16. By your assessment, has the body of scientific work published since 2005 indicated that the overall environmental and human health impacts of corn ethanol are now more significant and widespread than previously thought?
-

**Senator Kirsten E. Gillibrand**

- 1. Currently, the USDA provides resources and support for biofuel infrastructure and development through programs like the Biomass Crop Assistance Program (BCAP). For 2014, EPA has proposed lower renewable volume obligations for refiners and importers of petroleum based gasoline or diesel fuel despite the production of more biofuel than originally anticipated. Can you explain the impact that this reduction will have on advanced biofuel production activities funded by BCAP and on rural economies?**
  - 2. Eleven States and the City of New York have implemented or proposed using more biodiesel for all diesel fuel and/or heating oil sold in those regions. This increased demand for biodiesel suggests an expanding market for biodiesel producers. Why then is the 2014 proposed biodiesel production target set below the projected 1.28 billion gallon production estimate for 2014? How will this proposed reduction impact the emerging biodiesel market in New York State and New York City?**
-

**Senator David Vitter**

1. The Energy Information Administration estimated the following for U.S. consumption of ethanol: 12.9 billion gallons in 2010, 12.9 billion gallons in 2011, and 12.9 billion gallons in 2012. It may be around 13 billion gallons for 2013. Given your Agency's 2014 proposed RVO, what is EPA's projection of ethanol consumption in 2014?
2. Does EPA's proposed 2014 RVO actually cut corn ethanol consumption from where we are this year (2013)?
3. Please describe EPA's authority to reduce the advanced mandate by the amount of the cellulosic mandate and why EPA decided to exercise that authority in the proposed 2014 RVO.
4. Please describe how EPA concluded that the blend wall exists.
5. If EPA were to promulgate increased volumes (higher values) for ethanol in 2014 (closer to statutory levels), how much E85 would be necessary to achieve such blending requirements? How much E85 is currently being used?
6. Since July of 2010 EPA recorded the price of every RIN transaction. How does that square with comments that RINs are really free? Are RINs really free?

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7. Was EPA's E15 testing protocol specifically designed to test more than the emissions control system on MY2001 cars, or were the parameters limited to the emissions control device with only observations on the rest of the car?
8. Why were the 2013 and 2014 rules so late? What measures are being taken to ensure the rules come out on time in future years?
9. Does EPA have an estimate for the total cellulosic capacity under construction? Does EPA have an estimate for the total other advanced (non-biomass based diesel/non-cellulosic) capacity under construction?
10. Please describe the key assumptions behind the Monte Carlo analysis used for the proposed 2014 RVO and in particular the cellulosic numbers. Why is this process more accurate, particularly when considering the production numbers for 2013 and the fact that the cellulosic industry is on track to reach only 11% of the target set in August?
11. In California, due to the state's Low Carbon Fuel Standard, Brazilian ethanol is a primary compliance mechanism. What impact will your rule have on California's Low Carbon Fuel Standard?
12. During EPA Administrator Gina McCarthy's nomination process, she was asked if EPA was considering or had plans to establish a Low Carbon Fuels Standard and the response was negative. Is that still the case?

**Senator Roger F. Wicker**

1. Despite the fact that ethanol cannot be added to diesel fuel – and biodiesel cannot be added at more than 5% - the total renewable volume obligation for refiners includes both their gasoline and diesel production. Has the EPA considered how this disproportionately affects refiners who produce more diesel than gasoline?
  2. Studies conclude that gasoline with 15 percent ethanol, or E15, can cause premature engine damage and reduce fuel efficiency. A number of auto manufacturers have already said warranty coverage would not apply to vehicle damage resulting from gasoline with the higher blend of ethanol. What are the risks of expanded use of E-15 to automakers and gasoline-using equipment?
  3. Can you please comment on whether EPA has considered the significant volatility in the grain markets caused by the renewable fuel mandates, specifically addressing corn prices?
-

Senator Deb Fischer

1. Until the Agency issued its proposed rule establishing 2014 Renewable Volume Obligations under the RFS, EPA's consistent and carefully balanced implementation of the RFS has previously provided cellulosic and advanced biofuel developers and investors with the confidence that if they can produce these biofuels, there will be a market for them. This has helped biofuel producers overcome the challenges in meeting production goals due to innovation scale-up and perfecting first-of-a-kind technology. I have heard from advanced biofuel producers who say that your proposal breaks the fundamentals of the RFS by eliminating the certainty around the market for their product. Given this, where do you see the industry going in the next few years given the devastating impact that the Agency's proposed rule would have on the sector if adopted? Please explain the most important mechanism you see in your proposed rule that will continue to drive investment in the advanced biofuels space.
2. Due to regulatory delays within EPA, a number of producers and investors continue to wait for evaluation and approval of their RFS feedstock pathways. This in turn prevents from scaling up to commercial production of cellulosic and advanced biofuels.
  - a. Is EPA on track with its approval of enough diverse feedstock pathways to ensure that producers from all regions of the country can help us meet our RFS goals?
  - b. How many pathways has the Agency approved, and what is the average length of time it takes for a new applicant to receive approval?
  - c. How can EPA expedite additional pathway approval in the near future, so U.S. companies can continue to deploy innovative technologies and produce the additional volumes necessary to meet our cellulosic and advanced biofuel volume goals?
3. What steps has EPA taken to address RIN fraud?

## **Eades, Cassaundra**

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**From:** Haman, Patricia  
**Sent:** Tuesday, July 15, 2014 2:42 PM  
**To:** Eades, Cassaundra; Mims, Kathy  
**Subject:** FW: Follow Up Questions from Senate EPW Committee  
**Attachments:** 12.11.13 Hearing Follow Up Questions - Grundler.pdf

Hi Kathy and Sandy: I can't find this one in cms and have just pdf'd and sent the responses to EPW. Can you help? I want to put this in your box but don't want to do that to you without the control number! Thanks, Pat

Patricia Haman  
Office of Congressional Affairs  
U.S. EPA  
202-564-2806

**From:** Stark-Alcala, Mara (EPW) [mailto:Mara\_Stark-Alcala@epw.senate.gov]  
**Sent:** Wednesday, March 05, 2014 1:50 PM  
**To:** Haman, Patricia  
**Subject:** Follow Up Questions from Senate EPW Committee

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Attached please find correspondence addressed to you from the US Senate Environment and Public Works Committee.

We look forward to receiving your response.

Thanks,

Mara Stark-Alcalá  
Majority Press Assistant  
Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510  
202-224-8832 | 202-224-1273 (fax)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 15 2014

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Boxer:

Thank you for your letter of March 5, 2014, to Christopher Grundler requesting responses to Questions for the Record following the December 11, 2013, hearing before the Committee on Environment and Public Works entitled, "Oversight Hearing on Domestic Renewable Fuels."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions please contact me, or your staff may contact Patricia Haman at [haman.patricia@epa.gov](mailto:haman.patricia@epa.gov) or (202) 564 2806.

Sincerely,

A handwritten signature in black ink, appearing to read "Nichole Distefano", is written over a horizontal line.

Nichole Distefano  
Deputy Associate Administrator  
for Congressional Affairs

Enclosure

**Environment and Public Works Committee Hearing**  
**December 11, 2013**  
**Follow-Up Questions for Written Submission**

Questions for Christopher Grundler, Director, Office of Transportation and Air Quality

Questions from:

Senator Barbara Boxer

1. The Renewable Fuel Standard was designed, in part, to incent infrastructure investments in renewable fuels use by creating a stable and expanding market for such fuels. How will EPA's Proposed 2014 Volume Standards incentivize expanded renewable fuels infrastructure in the U.S.?

**Answer:** The proposal recognizes the current limitations on renewable fuel production and consumption, while establishing a methodology for setting future standards that will support the opportunity for growth of renewable fuel use over time. The proposed 2014 volumes were based on an estimate of all ethanol that could reasonably be expected to be consumed in 2014, including considerable growth in the assumed consumption of E85 in FFVs compared to 2013. As a result, the proposed volumes were set at a level beyond the estimated E10 blendwall. The proposed 2014 volumes also included all cellulosic biofuel and all non-ethanol advanced biofuel projected to be reasonably available in 2014. As the use of renewable fuels continues to rise, the infrastructure necessary to support them will continue to expand as well. The EPA will evaluate all comments it received on the proposed rule in preparing a final rule establishing the 2014 RFS standards.

2. Can you please explain the specific steps the EPA has taken to address individual cases of RIN fraud? What agency's actions have been taken to prevent future cases of RIN fraud?

**Answer:** The EPA has initiated and continues to pursue criminal investigations and civil enforcement proceedings against the companies suspected of fraud and violations of the RFS regulations. The focus of the EPA's enforcement efforts has been on the parties that actually generated invalid RINs. However, once these invalid RINs are in circulation, they continue to be used, and their use for compliance with Renewable Volume Obligations is prohibited by the RFS regulations. To address this issue, the EPA's Office of Enforcement and Compliance Assurance has issued Interim Enforcement Response Policies to provide a streamlined approach to allow parties who used invalid RINs to correct their violations without the EPA commencing a formal enforcement action. To date, the EPA has entered Administrative Settlement Agreements with 39 companies to resolve violations arising from their use of invalid RINs.

To help prevent future cases of RIN fraud, on July 2, 2014, the EPA issued a final rule to establish a voluntary quality assurance program for verifying the validity of RINs under the RFS program. The goals of the program are to promote greater liquidity in the RIN

market in a way that assures reasonable oversight of RIN generation and to assure use of the required renewable fuel volumes.

Senator Max Baucus

1. Did EPA review the change in market conditions for the oil sector or the renewable fuel sector if your proposed 2014 blending targets were to be adopted? What are the results of these analyses?

**Answer:** The EPA proposed to utilize the general waiver authority provided by section 211(o)(7) to reduce the volumes of renewable fuel otherwise required by statute based on "inadequate domestic supply." This does not provide the EPA with authority to waive the standards based on changes in market conditions for the oil or renewable fuel sectors, and such analyses were not carried out for the proposal. The EPA did conduct a thorough analysis of the projected ability for the market to produce and consume renewable fuels in 2014, and that analysis does look at various factors relevant to the fuels market, including both renewable and non-renewable fuels.

2. How do you believe your proposed 2014 blending targets will affect the status of infrastructure investments to deliver renewable fuels?

**Answer:** The proposal recognizes the current limitations on renewable fuel production and consumption, while establishing a methodology for setting future standards that will support the opportunity for growth of renewable fuel use over time. The proposed 2014 volumes were based on an estimate of all ethanol that could reasonably be expected to be consumed in 2014, including considerable growth in the assumed consumption of E85 in FFVs compared to 2013. As a result, the proposed volumes were set at a level beyond the estimated E10 blendwall. The proposed 2014 volumes also included all cellulosic biofuel and all non-ethanol advanced biofuel projected to be reasonably available in 2014. As the use of renewable fuels continues to rise, the infrastructure necessary to support them will continue to expand as well. The EPA will evaluate all comments it received on the proposed rule in preparing a final rule establishing the 2014 RFS standards.

3. How does EPA analyze the effects of the interaction between its annual blending targets, review and approval of new feedstock pathways, and other complementary federal programs such as loans, loan guarantees, and grants from the Departments of Energy and Agriculture?

**Answer:** The EPA proposes and finalizes applicable volume requirements on an annual basis, and the standards the EPA proposed in November 2013 apply to the 2014 calendar year. To the extent additional pathways are approved, and potential renewable fuel volumes change as a result of other government programs, the EPA will reflect this in the final 2014 standards and in future rules establishing annual standards.

4. What has EPA done to address individual cases of RIN fraud and other potential manipulation in the RIN market as well as what systemic steps you have taken to address these issues?

**Answer:** The EPA has initiated and continues to pursue criminal investigations and civil enforcement proceedings against the companies suspected of fraud and violations of the RFS regulations. The focus of the EPA's enforcement efforts has been on the parties that actually generated invalid RINs. However, once these invalid RINs are in circulation, they continue to be used, and their use for compliance with Renewable Volume Obligations is prohibited by the RFS regulations. To address this issue, the EPA's Office of Enforcement and Compliance Assurance has issued Interim Enforcement Response Policies to provide a streamlined approach to allow parties who used invalid RINs to correct their violations without the EPA commencing a formal enforcement action. To date, the EPA has entered Administrative Settlement Agreements with 39 companies to resolve violations arising from their use of invalid RINs.

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Several media articles in the fall of 2013 proposed a possible link between RIN price increases and speculation and manipulation of the RIN market by financial institutions. However, data from the EPA's Moderated Transaction System (EMTS) continue to show that the only parties with more than one percent of the market are obligated parties with renewable volume obligations in excess of one percent. The EPA monitors the program's implementation and the RIN market, engaging on a regular basis with the Department of Agriculture and the Department of Energy, as well as the U.S. Commodity Futures Trading Commission (CFTC), which has regulatory jurisdiction over RIN futures markets.

5. Is it legal to use E15 in a motorcycle?

**Answer:** No. The E15 waiver was only for 2001 and later model year light-duty vehicles and trucks. The EPA denied the E15 waiver request for motorcycles in the first E15 Partial Waiver decision due to a lack of data demonstrating that E15 would not cause or contribute to the failure of emission controls over motorcycles' full useful lives. The EPA also prohibited the sale and use of E15 in motorcycles in the E15 Misfueling Mitigation Rulemaking due to concerns over the potential harm to motorcycles' emission controls.

Senator Thomas R. Carper

1. Mr. Grundler, can you tell the Committee what the EPA has done to increase transparency in the RIN markets? Does the EPA intend to do more? Are there tools that could help the agency increase transparency that are not legally available to you now?

**Answer:** The EPA has taken a number of steps to enhance and increase the data transparency of the RIN tracking system and continues to investigate additional steps. The EPA is implementing a program with a number of features designed by the agency to provide data transparency, consistent with agency obligations regarding the treatment of submissions that are claimed to be confidential business information. Transactional information reported to the EPA Moderated Transaction System by RIN generators, RIN buyers and sellers, and obligated parties is typically claimed as confidential business information (CBI). In most cases, material claimed as CBI may not be made available to the public until a final confidentiality determination (40 CFR Part 2, Subpart B) finds that it is not entitled to be claimed as CBI. In the absence of a final determination, the EPA treats such material as confidential unless its governing regulations provide otherwise. There is a considerable amount of publicly available information related to renewable fuel and RIN data on the EPA website, including RIN generation and renewable fuel volume production by month and by fuel type, available RINs to date, RIN retirements by fuel category and RIN separation by condition (e.g., whether separation was by an obligated party, a blender, an exporter, or a producer). We are exploring ways to increase the amount of data related to RINs that we publish on our website.

2. Mr. Grundler, under EPA's analysis in the recent 2014 proposed rule, the EPA has determined there is not the available infrastructure to handle the increased levels of biofuels required under the Clean Air Act. If the EPA adjusts the RFS downward to meet the current infrastructure, what drives new investments in infrastructure to handle future volume requirements? Can you tell the Committee, how does this nation get past the blendwall under the current proposal? How can this country incentivize the increased investments in E85 pumps, E15 pumps and vehicles that are optimized for future ethanol blends?

**Answer:** The proposal recognizes the current limitations on renewable fuel production and consumption, while establishing a methodology for setting future standards that will support the opportunity for growth of renewable fuel use over time. The proposed 2014 volumes were based on an estimate of all ethanol that could be reasonably be expected to be consumed in 2014, including considerable growth in the assumed consumption of E85 in FFVs compared to 2013. As a result, the proposed volumes were set at a level beyond the estimated E10 blendwall. The proposed 2014 volumes also included all cellulosic biofuel and all non-ethanol advanced biofuel projected to be reasonably available in 2014. As the use of renewable fuels continues to rise, the infrastructure necessary to support them will continue to expand as well. The EPA will evaluate all comments it received on the proposed rule in preparing a final rule establishing the 2014 RFS standards.

3. Currently, car companies are starting to make adjustments to meet Tier 3 emissions standards. Can you tell the Committee if the EPA is working with industry to incentivize the production of vehicles that can run on future ethanol blends? If not, why not?

**Answer:** Since the 1980s, a major incentive to produce ethanol flexible fuel vehicles (FFVs) has been the availability of credits under the Corporate Average Fuel Economy (CAFE) program. Through the Energy Independence and Security Act (EISA) of 2007, incentives for FFVs are phased down over time. Under the EPA's greenhouse gas (GHG) emissions standards for light-duty vehicles, automakers can achieve GHG emissions credits equivalent to the CAFE credits through 2015. Beginning in 2016, GHG emissions compliance for ethanol FFVs will be based on demonstrated emissions performance on both gasoline and E85, and a determination of the fractions of time that FFVs would use gasoline and E85. Our Tier 3 final rulemaking contains a provision allowing vehicle manufacturers to request approval for an alternative certification fuel such as a 30 percent ethanol by volume blend (E30) for vehicles that may be optimized for such fuel.

4. Many small and mid-range refineries do not have the capabilities to blend and must buy many or all of their RINs on the market. As a result, high and volatile RIN prices have had a large impact on these refineries. As the RFS continues, what can be done – if anything - to assist these smaller refineries?

**Answer:** The RFS program as established by EPAct and amended by EISA exempted small refineries from the renewable fuel standards until calendar year 2011. After this initial period, the statute allows that small refineries may, on a case-by-case basis, petition the EPA for an extension of their exemption. The EPA may approve such petitions if it finds that disproportionate economic hardship exists. The EPA continues to implement these provisions. We have acted on four petitions and are reviewing an additional ten for the 2013 compliance period.

5. Do you believe your proposal will impact future advanced biofuel investments – if not, why not?

**Answer:** The intent of our proposal was to support ongoing growth in the use of advanced biofuels. Since the proposal was released, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. We are currently evaluating the over 300,000 comments we received on the 2014 RFS proposal, and we are assessing any new data that we have received on the availability of advanced biofuel. We will take this new input on advanced biofuels into account in our final rule.

Senator Benjamin L. Cardin

1. Are the challenges of the blend wall the primary driver behind the proposed reduction in 2014 RVO (renewable volume obligations)?

**Answer:** The EPA proposed reductions to advanced biofuel and total renewable fuel from the statutory volumes due to the practical realities of the current marketplace and infrastructure constraints, as well as the shortfall in the available supplies of advanced biofuels to meet the statutory volumes. Although we have made significant progress towards the statute's goal of increased renewable fuel use under the RFS program, cellulosic biofuel production has lagged far behind the volumes established in EISA. This has led to an overall shortfall in the advanced biofuel volumes in 2014. In addition, the gasoline market is now saturated with E10, and the opportunities for sales of higher ethanol blends such as E85 are limited by the available infrastructure and by other factors.

Using flexibilities built into the law, the EPA is proposing to adjust some of the volume requirements set by Congress for 2014 to align the program with the projected ability of the market to supply and consume renewable fuels. The EPA is required to set standards for the RFS program each year, and the law allows the EPA to make adjustments to the law's targets under certain circumstances.

- a. Is ethanol the fuel additive that causes blend wall problems?

**Answer:** Yes, ethanol is the fuel additive that the EPA has been addressing when discussing the "E10 blendwall."

- b. Do biodiesel and advanced "drop-in" biofuels contribute to the blend wall problems?

**Answer:** Biodiesel and "drop-in" biofuels do not contribute to E10 blendwall issues.

2. Since the advanced biofuel industry generated 3.2 billion gallons worth of RINs in 2013 and most of these fuels do not contribute to the blend wall problem, why is EPA proposing to reduce the advanced biofuel volumes for 2014 to 2.2 billion gallons?

**Answer:** The intent of our proposal was to support ongoing growth in the use of advanced biofuels. Since the proposal was released, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. We are currently evaluating the over 300,000 comments which we received on the 2014 RFS proposal, and we are assessing any new data that we have received on the availability of advanced biofuel. We will take this new input on advanced biofuels into account in our final rule.

3. Could you explain how the Monte Carlo system EPA proposes will reflect the actual gallons being produced?



**Answer:** The Monte Carlo method was used in the proposal to combine different sources of renewable fuels, all with different ranges of potential volumes and levels of uncertainty, into a single estimate of potential volume for 2014. The inputs into the Monte Carlo analysis included information on actual renewable fuel production. These inputs will be updated for the final rule to account for more recent information on actual production.

4. Will the mean you are proposing most likely always under estimate actual production?

**Answer:** The use of the mean accounts for the uncertainty inherent in making projections of future production, distribution, and consumption capabilities. Thus the mean is equally likely to over-estimate or under-estimate future production. Moreover, the use of a volume higher than the mean as the basis of the applicable standards would increase the likelihood of non-compliance due to insufficient supply.

5. If the biomass-based diesel pool produced around 1.7 billion gallons why is EPA proposing the mandates to be kept at 1.28 for both 2014 and 2015?

**Answer:** While the applicable biomass-based diesel (BBD) standard in 2013 was 1.28 billion gallons, the biodiesel industry produced significantly more than the 1.28 billion gallon standard because it was profitable for them to do so. There are a number of factors that influenced this production level, such as the biodiesel tax credit and high ethanol prices, which allowed biodiesel to be competitive in meeting the advanced and total standards in the context of the E10 blendwall. There was also strong demand for biodiesel in other countries in 2013, leading to high levels of export that are not reflected in the use of production volumes alone. To the extent that these or other favorable market conditions exist in 2014, the biodiesel industry would again benefit from production in excess of 1.28 billion gallons.

The proposed BBD standard was set at a level intended to balance the many different factors the EPA is required to consider when setting this standard. Furthermore, even though we proposed to maintain the BBD standard at 1.28 billion gallons, we also proposed to use biodiesel volumes above 1.28 billion gallons in setting the advanced biofuel standard. It is important to understand that the 1.28 billion gallon standard is a minimum – it is a floor, rather than a cap. Biodiesel production could continue to exceed the level of the BBD standard and compete with other advanced biofuels in meeting the advanced biofuel standard, just as it successfully did in 2013. The EPA is in the process of reviewing the comments received on the proposal and gathering additional data and information. This will be reflected in the standards for the final rule.

6. Why has EPA struggled over the last several years in moving new pathways for biofuels as well as updating the general rules governing the biofuels industry?

**Answer:** The EPA already has approved a significant list of advanced and cellulosic biofuels under the RFS program. Please see:  
<http://www.epa.gov/otaq/fuels/renewablefuels/new-pathways/rfs2-pathways->

[determinations.htm](#). We have also established a process to evaluate new biofuels for use in the RFS program, and we are actively engaged with stakeholders to expand the number of approved renewable fuel pathways. In June 2013, we issued a proposed rule that will expand the opportunity for the use of additional advanced biofuels, including cellulosic fuels from certain types of biogas. The agency will continue to evaluate additional fuel pathways under the program to support attaining the goals of the RFS program.

However, the RFS program is facing new and different issues on an ongoing basis as the renewable fuels market continues to evolve and grow. In order to carry out its responsibilities, the agency has shifted resources from other program areas to the extent possible, but declining agency resources has made this difficult. To address some of these challenges, on March 13 the EPA posted a program announcement about activities that we are undertaking to improve the petition process for new fuel pathways. Considering resource limitations, we will be setting priorities with respect to petition reviews, such as focusing on pathways that can contribute to meeting the cellulosic biofuel volumes. During the improvement process, the EPA intends to continue reviewing pending petitions that are high priority, and pending petitions for which substantial modeling has already been done.

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7. What happens to the proposed cellulosic mandate for 2014 if EPA completes its Pathways Two Rule after you announce the RVOs?

- a. Won't millions of gallons have been added that are known to be coming but are not included in the target?

**Answer:** The EPA proposed to incorporate potential cellulosic volumes only from any new pathways that are finalized prior to issuing the final 2014 standards. The EPA issued the Pathways 2 final rulemaking on July 2, 2014, and will account for the volumes associated with these new approved pathways in our rule to finalize the 2014 volumes and percentage standards.

8. What consideration is EPA giving to the negative market signals to advanced biofuel industry investment community that may result from the proposed reductions to the advanced biofuel volumes for 2014?

**Answer:** The intent of our proposal was to support ongoing growth in the use of advanced biofuels. Since the proposal was released, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. We are currently evaluating the over 300,000 comments which we received on the 2014 RFS proposal, and we are assessing any new data that we have received on the availability of advanced biofuel. We will take this new input on advanced biofuels into account in our final rule.

9. If the blend wall is the primary driver for the proposed RVO, why is EPA cutting 40% for Advanced Biofuels off the 2007 statutory requirement and less than 10% for corn ethanol?

**Answer:** The EPA proposed reductions to advanced biofuel and total renewable fuel from the statutory volumes due to the practical realities of the current marketplace and infrastructure constraints, as well as the shortfall in the available supplies of advanced biofuels to meet the statutory volumes. Although we have made significant progress towards the statute's goal of increased renewable fuel use under the RFS program, cellulosic biofuel production has lagged far behind the volumes established in EISA. This has led to an overall shortfall in the advanced biofuel volumes in 2014. In addition, the gasoline market is now saturated with E10, and the opportunities for sales of higher ethanol blends such as E85 are limited by the available infrastructure and by other factors.

The EPA proposed to waive the advanced biofuel standard to a level that could be met without exacerbating the E10 blendwall. This resulted in roughly equal reductions of about 1.5 billion gallons for both conventional (non-advanced) biofuel and advanced biofuel. At the same time, the EPA sought comment on two other approaches to setting the advanced biofuel standard. One would increase and the other decrease the proportion of advanced biofuel to conventional biofuel compared to the proposal. The EPA is in the process of reviewing the comments received on the proposal and gathering additional data and information. This will be reflected in the standards for the final rule.

10. Is the conventional ethanol sector now mature enough at the E10 blend wall to no longer need the artificial support of a RFS mandate?

**Answer:** The EPA does not have a position on that question. Congress directed the EPA to administer the RFS program and our current focus is on implementation.

11. Why doesn't the EISA waiver process (Section 211(o)(7)(B)) need to be amended to better protect livestock and poultry producers by having hard triggers on feedstock supplies and prices?

**Answer:** Congress directed the EPA to administer the RFS program and our current focus is on implementation. The EPA does not have a position on whether the Section 211(o)(7) waiver process needs to be amended.

12. What guarantees can EPA provide consumers who own and operate lawnmowers, generators, boats and cars that they will not mis-fuel?

**Answer:** E15 pumps will be clearly labeled in accordance with the conditions placed on the E15 partial waivers and the labeling provisions of the E15 Misfueling Mitigation Rulemaking to help ensure that consumers will not inadvertently misfuel vehicles, engines and equipment not covered by the E15 partial waivers.

13. As the statute requires increased volumes of ethanol in the fuel supply, what guarantees will consumers have that they will be able to purchase E0 and E10 at an affordable price?

**Answer:** The market will determine what renewable fuels are used to meet the renewable fuels standard, what blends are marketed, and at what prices. While E10 is now ubiquitous, E0 will be supplied to markets where consumers demand it. In our proposed rule for the 2014 RFS volumes, we asked for more information on the volume of E0 currently used in the gasoline pool.

14. Do you feel that a label simply notifying the consumer of an E15 pump, a label that doesn't even warn of the potential hazards of misfueling, provides the adequate assurances against misfueling?

**Answer:** The EPA requires that the E15 label include language warning consumers that the misfueling of vehicles, engines, and equipment not covered by the E15 partial waivers may cause damage to those engines. The EPA worked closely with labeling experts at the Federal Trade Commission and affected industry stakeholders through the E15 Misfueling Mitigation Rulemaking process to ensure that effective misfueling mitigation measures were developed. The EPA continues to believe that the misfueling mitigation measures adopted after extensive public engagement are reasonable, appropriate and sufficient to address E15 misfueling concerns.

15. If the majority of ethanol plants are failing to achieve the greenhouse gas reduction for ethanol, how confident are you that the industry will meet future greenhouse gas reduction requirements?

**Answer:** The Clean Air Act exempt facilities that commenced construction prior to enactment of the 2007 Energy Independence and Security Act from the otherwise generally applicable 20% minimum greenhouse gas reduction threshold for renewable fuels. The statute also does not require that these facilities make upgrades in order to achieve the 20% threshold. However, industry surveys suggest that dry mill ethanol plants in the United States are becoming more efficient. The EPA has received a number of petitions from corn ethanol plants requesting qualification for the generation of renewable fuel RINs based on the use of efficient processing technologies that can reduce greenhouse gas emissions. To date, the EPA has reviewed and approved eight of these petitions for corn ethanol plants that use standard dry mill technologies, suggesting other corn ethanol plants could meet the greenhouse gas requirements using currently available technologies.

16. By your assessment, has the body of scientific work published since 2005 indicated that the overall environmental and human health impacts of corn ethanol are now more significant and widespread than previously thought?

**Answer:** The EPA has not performed a comprehensive assessment of the entire body of scientific work since 2005. However, a number of different organizations have assessed

(and continue to examine) the impacts of the RFS program on human health and the environment, including the impacts of corn ethanol. In 2012, the EPA issued a Report to Congress on the environmental impacts of the RFS program, as required by the Energy Independence and Security Act (EISA's Section 204 Report). Congress also required the National Academies to review the RFS program, and the National Research Council issued their report in 2011 (*Renewable Fuel Standard: Potential Economic and Environmental Effects of U.S. Biofuel Policy*). Those reports provide a starting assessment of the environmental impacts of biofuels and the RFS program. For example, the reports concluded that much of the environmental impact of biofuel production depends on the feedstock used. For example, feedstocks that require more water or more fertilizer are likely to have a greater impact on the environment.

In the regulatory impact analysis that accompanied the "Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Final Rule" (RFS2 final rule) in 2010, the EPA analyzed the criteria pollutant air quality and related health impacts of RFS2 volumes in 2022, compared to both volumes required by RFS1 and compared to those projected by AEO 2007. This analysis projected increases in population-weighted annual average ambient PM and ozone concentrations, which in turn lead to health impacts such as premature mortality. In that same analysis, the EPA also projected that ethanol made from corn starch contributed to greenhouse gas emission reductions through 2022. The EPA is also continuing its analysis to support the "anti-backsliding study," which Clean Air Act sections 211(q) and (v) direct the EPA to conduct to determine whether required renewable fuel volumes will adversely impact air quality. That analysis will be based on the EPA's most recent data on the effects of ethanol on vehicle and engine emissions.

Senator Kirsten E. Gillibrand

1. Currently, the USDA provides resources and support for biofuel infrastructure and development through programs like the Biomass Crop Assistance Program (BCAP). For 2014, EPA has proposed lower renewable volume obligations for refiners and importers of petroleum based gasoline or diesel fuel despite the production of more biofuel than originally anticipated. Can you explain the impact that this reduction will have on advanced biofuel production activities funded by BCAP and on rural economies?

**Answer:** The EPA has been engaged with USDA from the outset of our regulatory development process for the RFS program since 2005. However, the EPA would defer to USDA with regard to specific activities funded by the USDA BCAP program.

2. Eleven States and the City of New York have implemented or proposed using more biodiesel for all diesel fuel and/or heating oil sold in those regions. This increased demand for biodiesel suggests an expanding market for biodiesel producers. Why then is the 2014 proposed biodiesel production target set below the projected 1.28 billion gallon production estimate for 2014? How will this proposed reduction impact the emerging biodiesel market in New York State and New York City?

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**Answer:** While the applicable biomass-based diesel (BBD) standard in 2013 was 1.28 billion gallons, the biodiesel industry produced significantly more than the 1.28 billion gallon standard because it was profitable for them to do so. There are a number of factors that influenced this production level, such as the biodiesel tax credit and high ethanol prices, which allowed biodiesel to be competitive in meeting the advanced and total standards in the context of the E10 blendwall. There was also strong demand for biodiesel in other countries in 2013, leading to high levels of export that are not reflected in the use of production volumes alone. To the extent that these or other favorable market conditions exist in 2014, the biodiesel industry would again benefit from production in excess of 1.28 billion gallons.

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Senator David Vitter

1. The Energy Information Administration estimated the following for U.S. consumption of ethanol: 12.9 billion gallons in 2010, 12.9 billion gallons in 2011, and 12.9 billion gallons in 2012. It may be around 13 billion gallons for 2013. Given your Agency's 2014 proposed RVO, what is EPA's projection of ethanol consumption in 2014?

**Answer:** In the 2014 volume rule proposal, the EPA estimated ethanol consumption for 2014 would be 13.0 Bgal, comprised of 12.9 Bgal of E10 and 180 Mgal though sales of E85.

2. Does EPA's proposed 2014 RVO actually cut corn ethanol consumption from where we are this year (2013)?

**Answer:** No. Actual domestic consumption of ethanol in 2013 was about 13 billion gallons, the same as the EPA has proposed for conventional (non-advanced) biofuel in 2014. However, there is no specified volume requirement under the RFS program specifically for corn ethanol.

3. Please describe EPA's authority to reduce the advanced mandate by the amount of the cellulosic mandate and why EPA decided to exercise that authority in the proposed 2014 RVO.

**Answer:** If the Administrator waives the cellulosic biofuel standard, Section 211(o)(7) of the Clean Air Act allows the Administrator to reduce the level of the advanced and total renewable fuel standards by up to the same amount. The EPA projected volumes of all non-ethanol advanced biofuel that were reasonable to believe would be produced in 2014 at the time the proposal was developed. This volume fell short of the advanced biofuel standard otherwise required by the statute, prompting the EPA to propose to waive the standard to the projected level. The EPA is in the process of reviewing the comments received on the proposal and gathering additional data and information. This will be reflected in the standards for the final rule.

4. Please describe how EPA concluded that the blend wall exists.

**Answer:** The E10 blend wall is defined as the point at which the gasoline fuel pool is saturated with ethanol at the 10 percent level in order to meet the RFS standards. Based on our analysis of all relevant data, we determined that this limit was reached in 2013.

5. If EPA were to promulgate increased volumes (higher values) for ethanol in 2014 (closer to statutory levels), how much E85 would be necessary to achieve such blending requirements? How much E85 is currently being used?

**Answer:** In the proposal, it was estimated that about 100 million gallons of E85 would be consumed in 2013. If the 2014 statutory volume of 18.15 billion gallons for total renewable fuel were not waived, total consumption of E85 would likely need to be many



times higher than 100 million gallons. However, the RFS mandates need not be met with only ethanol. As a result, there is no single answer to this question.

6. Since July of 2010 EPA recorded the price of every RIN transaction. How does that square with comments that RINs are really free? Are RINs really free?

**Answer:** RINs are generated upon production of renewable transportation fuels and are required to be sold with the fuel by the producer. The price paid in this situation is for both the value of renewable fuel itself and the value of the RIN that comes with it.

7. Was EPA's E15 testing protocol specifically designed to test more than the emissions control system on MY2001 cars, or were the parameters limited to the emissions control device with only observations on the rest of the car?

**Answer:** The test data and other information that the EPA relied upon in reaching its waiver decisions came from a number of sources that in many cases evaluated the potential impacts of E15 on vehicle characteristics beyond simply emissions performance. The EPA did not conduct testing specifically to evaluate the E15 waiver request. The EPA issued its E15 partial waiver decisions which allow model year 2001 and newer light-duty motor vehicles to use gasoline-containing up to 15 volume percent ethanol (E15) based on an extensive review of all relevant scientific and engineering information. Across the approximately 30 studies the EPA used to support its waiver decisions, which includes the comprehensive work conducted by the Department of Energy (DOE), no fuel-related issues regarding fuel system compatibility or engine durability arose when the fuel systems and/or engines were operated or tested on E15. Taken together, these studies represent the operation of hundreds of vehicles over millions of miles on E15 under real world and testing conditions without issue. More specific to the EPA's authority to grant waivers under section 211(f)(4) of the Clean Air Act, model year 2001 and newer light-duty motor vehicles continued to meet applicable federal emissions standards over the vehicles' full useful lives when operated and tested on E15.

8. Why were the 2013 and 2014 rules so late? What measures are being taken to ensure the rules come out on time in future years?

**Answer:** The RFS touches a range of complex environmental, energy and agricultural issues, and public comment adds to the timelines for issuing such standards. The EPA is currently considering how to improve our internal regulatory processes in order to meet established deadlines. The EPA will be engaging our interagency partners and will identify any areas that could be streamlined for a more efficient and timely promulgation of future rules.

9. Does EPA have an estimate for the total cellulosic capacity under construction? Does EPA have an estimate for the total other advanced (non-biomass based diesel/non-cellulosic) capacity under construction?



**Answer:** For the 2014 annual standards proposal, the EPA has projected cellulosic biofuel and total advanced biofuel production for 2014. While the EPA tracks ongoing developments in biofuel production, our focus for the annual rulemakings is on potential production volume for the calendar year in question. The EPA does not track closely the many other facilities in varying states of construction that may be relevant in future years.

10. Please describe the key assumptions behind the Monte Carlo analysis used for the proposed 2014 RVO and in particular the cellulosic numbers. Why is this process more accurate, particularly when considering the production numbers for 2013 and the fact that the cellulosic industry is on track to reach only 11% of the target set in August?

**Answer:** The volume projections presented in the proposal were based on a facility-by-facility assessment, consistent with the approach used in previous years. The Monte Carlo analysis was used as a means to address uncertainty in the projections from the various different facilities and combine them into an overall range of potential volumes for 2014. Such an approach was not necessary for 2013, as there were only two companies with potential volumes for 2013, but we believe it will help to improve the accuracy of projections for 2014 and beyond.

11. In California, due to the state's Low Carbon Fuel Standard, Brazilian ethanol is a primary compliance mechanism. What impact will your rule have on California's Low Carbon Fuel Standard?

**Answer:** Sugarcane ethanol qualifies as an advanced biofuel under the RFS program, and it has historically been imported into the U.S., with the majority coming from Brazil. We understand that Brazilian ethanol is also used to comply with California's Low Carbon Fuel Standard (LCFS). The EPA has not conducted an analysis assessing the impact our proposed RFS standards for 2014 would have on California's LCFS.

12. During EPA Administrator Gina McCarthy's nomination process, she was asked if EPA was considering or had plans to establish a Low Carbon Fuels Standard and the response was negative. Is that still the case?

**Answer:** At the time, the Administrator responded that the agency is not considering nor does it currently have any plans to establish a Low Carbon Fuel Standard under the Clean Air Act. That answer is still correct.

Senator Roger F. Wicker

1. Despite the fact that ethanol cannot be added to diesel fuel – and biodiesel cannot be added at more than 5% - the total renewable volume obligation for refiners includes both their gasoline and diesel production. Has the EPA considered how this disproportionately affects refiners who produce more diesel than gasoline?

**Answer:** This is an issue that we proposed and sought comment on in “Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program; Final Rule” (RFS2 final rule) in 2010. Refiners overwhelmingly supported an approach that based their obligations on the sum of their gasoline and diesel production rather than applying standards separately to gasoline and diesel.

Since the RFS standards in both EPAct and EISA are generally neutral with respect to the type of renewable fuel used and not a simple mandate for ethanol to be blended into gasoline or biodiesel into diesel fuel, there is no clear component that applies specifically to gasoline or diesel fuel. The possible exception is the biomass-based diesel standard. However, the biomass-based diesel standard is a subset of the advanced and total standards. The RFS program is also neutral with respect to the type of renewable fuel used, in what concentration, and in replacing what transportation fuel (or heating oil or jet fuel). Consequently to allow any qualifying renewable fuel (ethanol, biodiesel, renewable diesel, biogas, biobutanol, etc.) used to replace any transportation fuel, heating oil or jet fuel to be used to demonstrate compliance, the EPA designed the RFS regulations centered around the flexibility afforded by the use of RINs. RINs generated upon the production of a renewable fuel are then used to demonstrate compliance. This enables obligated parties (refiners and importers) to comply regardless of whether they produced gasoline, diesel or both.

2. Studies conclude that gasoline with 15 percent ethanol, or E15, can cause premature engine damage and reduce fuel efficiency. A number of auto manufacturers have already said warranty coverage would not apply to vehicle damage resulting from gasoline with the higher blend of ethanol. What are the risks of expanded use of E-15 to automakers and gasoline-using equipment?

**Answer:** Based on the test data and the engineering analysis on which the E15 partial waivers were based, the EPA believes that there are no risks to the emissions control systems of model year 2001 and newer light-duty vehicles (i.e., vehicles in which E15 may be used per the partial waiver decisions) fueled with E15. For model year 2000 and older motor vehicles and all nonroad vehicles, engines, and equipment (collectively “nonroad products”), the EPA concluded in its E15 waiver decisions and the E15 Misfueling Mitigation rulemaking that E15 use in these vehicles and engines may harm their emissions controls. Through the conditions on the E15 waivers and through the E15 Misfueling Mitigation Rulemaking, the EPA implemented several misfueling mitigation measures to limit the risk of E15 use in model year 2000 and older vehicles and nonroad products.

3. Can you please comment on whether EPA has considered the significant volatility in the grain markets caused by the renewable fuel mandates, specifically addressing corn prices?

**Answer:** The EPA acknowledges that the RFS can influence corn prices, although it is important to note that there are many different factors that affect corn and other grain prices, and thereby influence price volatility. The RFS program itself is neutral with respect to the type of renewable fuel used and from what feedstock it is derived as long as the fuel meets the definitions provided in the Clean Air Act. In the RFS final rule, the EPA estimated that the increase in renewable fuel volumes needed to meet the RFS2 requirements would result in an increase in U.S. corn prices of approximately 8 percent by 2022.

Senator Deb Fischer

1. Until the Agency issued its proposed rule establishing 2014 Renewable Volume Obligations under the RFS, EPA's consistent and carefully balanced implementation of the RFS has previously provided cellulosic and advanced biofuel developers and investors with the confidence that if they can produce these biofuels, there will be a market for them. This has helped biofuel producers overcome the challenges in meeting production goals due to innovation scale-up and perfecting first-of-a-kind technology. I have heard from advanced biofuel producers who say that your proposal breaks the fundamentals of the RFS by eliminating the certainty around the market for their product. Given this, where do you see the industry going in the next few years given the devastating impact that the Agency's proposed rule would have on the sector if adopted? Please explain the most important mechanism you see in your proposed rule that will continue to drive investment in the advanced biofuels space.

**Answer:** The intent of our proposal was to support ongoing growth in the use of advanced biofuels. Since the proposal was released, we have met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. We are currently evaluating the over 300,000 comments which we received on the 2014 RFS proposal, and we are assessing any new data that we have received on the availability of advanced biofuel. We will take this new input on advanced biofuels into account in our final rule.

2. Due to regulatory delays within EPA, a number of producers and investors continue to wait for evaluation and approval of their RFS feedstock pathways. This in turn prevents from scaling up to commercial production of cellulosic and advanced biofuels.
  - a. Is EPA on track with its approval of enough diverse feedstock pathways to ensure that producers from all regions of the country can help us meet our RFS goals?

**Answer:** We have already approved a diverse set of feedstock pathways but continue to add to this list. Please see: <http://www.epa.gov/otaq/fuels/renewablefuels/new-pathways/rfs2-pathways-determinations.htm>.

- b. How many pathways has the Agency approved, and what is the average length of time it takes for a new applicant to receive approval?

**Answer:** The EPA considers a fuel pathway to be a unique combination of a feedstock, fuel production technology and type of fuel. Using this definition, the EPA has approved over 200 renewable fuel pathways as eligible to generate RINs. The average review time for completed petition determinations has been 15 months.

- c. How can EPA expedite additional pathway approval in the near future, so U.S. companies can continue to deploy innovative technologies and produce the additional volumes necessary to meet our cellulosic and advanced biofuel volume goals?

**Answer:** In March of this year, the EPA announced an initiative to improve the petition process for new fuel pathways, including several elements:

- Undertaking a “Lean” government exercise to improve the quality, transparency and efficiency of our internal review processes.
- Developing improved guidance for petitioners, including step-by-step instructions and application templates for different types of petitions.
- Launching a more automated review process for petitions using previously approved feedstocks and well known production process technologies (e.g., dry mill ethanol plants).

3. What steps has EPA taken to address RIN fraud?

**Answer:** The EPA has initiated and continues to pursue criminal investigations and civil enforcement proceedings against the companies suspected of fraud and violations of the RFS regulations. The focus of the EPA’s enforcement efforts has been on the parties that actually generated invalid RINs. However, once these invalid RINs are in circulation, they continue to be used, and their use for compliance with Renewable Volume Obligations is prohibited by the RFS regulations. To address this issue, the EPA’s Office of Enforcement and Compliance Assurance has issued Interim Enforcement Response Policies to provide a streamlined approach to allow parties who used invalid RINs to correct their violations without the EPA commencing a formal enforcement action. To date, the EPA has entered Administrative Settlement Agreements with 39 companies to resolve violations arising from their use of invalid RINs.

To help prevent future cases of RIN fraud, on July 2, 2014, the EPA issued a final rule to establish a voluntary quality assurance program for verifying the validity of RINs under the RFS program. The goals of the program are to promote greater liquidity in the RIN market in a way that assures reasonable oversight of RIN generation and to assure use of the required renewable fuel volumes.

AL 12-000-2709

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA FORNER, MAJORITY STAFF DIRECTOR  
RUTH VAN MARK, MINORITY STAFF DIRECTOR

February 10, 2012

Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Jackson,

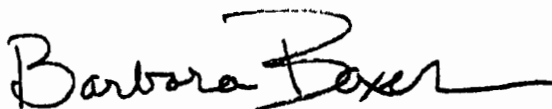
As you know, the Senate Environment and Public Works Committee (EPW) has been conducting oversight on a number of issues related to public health, and particularly children's health. One of the issues that EPW is reviewing concerns what additional steps should be taken to protect children from exposure to radon in schools.

My staff has been monitoring the initiatives that the Environmental Protection Agency (EPA) has undertaken to reduce the risks posed by indoor radon levels. EPA's activities in this regard include providing grants and technical assistance to construct and retrofit schools and other buildings to reduce radon exposure, and promoting building designs that reduce the risks from radon. The EPW Committee is also aware that EPA and other federal agencies issued an action plan in 2011 to protect the American public from radon. The action plan emphasizes collaboration with state, industry, and nonprofits to promote testing and mitigation efforts, and to better inform people, businesses, and builders about radon's risks.

I would like to request that the relevant experts at EPA arrange a briefing for my staff on the agency's actions to safeguard the public from radon and to discuss what further steps can be taken to protect the public from this pollutant.

I would appreciate your response to my request by February, 17, 2012. Please contact Grant Cope (202/224-8832) with any questions.

Sincerely,



Barbara Boxer  
Chairman

AL-12-001-2174

BARBARA BOXER, CALIFORNIA, CHAIRMAN

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JOHN BOOZMAN, ARKANSAS

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTONA ROBERTS, MAJORITY STAFF DIRECTOR  
RUTH VAN METER, MINORITY STAFF DIRECTOR

July 10, 2012

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Dear Administrator Jackson:

Thank you for appearing before the Committee on Environment and Public Works on March 22, 2012 at the hearing entitled, "Environmental Protection Agency Fiscal Year 2013 Budget Hearing." We appreciate your testimony and we know that your input will prove valuable as we continue our work on this important topic.

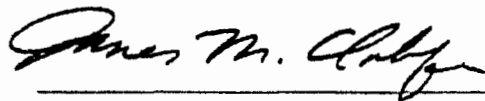
Enclosed are questions for you that have been submitted by Senators Boxer, Carper, Whitehouse, Inhofe, and Vitter for the hearing record. Please submit your answers to these questions by COB July 24, 2012 to the attention of Mara Stark-Alcalá, Senate Committee on Environment and Public Works, 410 Dirksen Senate Office Building, Washington, DC 20510. In addition, please provide the Committee with a copy of your answers via electronic mail to [Mara\\_Stark-Alcala@epw.senate.gov](mailto:Mara_Stark-Alcala@epw.senate.gov). To facilitate the publication of the record, please reproduce the questions with your responses.

Again, thank you for your assistance. Please contact Grant Cope of the Majority Staff at (202) 224-8832, or Matthew Hite of the Minority Staff at (202) 224-6176 with any questions you may have. We look forward to reviewing your answers.

Sincerely,



Barbara Boxer  
Chairman



James M. Inhofe  
Ranking Member

**Environment and Public Works Committee Hearing**  
**March 22, 2012**  
**Follow-Up Questions for Written Submission**

Questions for Jackson

Questions from:

Senator Barbara Boxer

1. EPA's revolving loan programs for drinking and waste water infrastructure help to ensure that the water we drink is safe and that our lakes and rivers are clean.

Can you describe the factors that EPA weighed when it was considering cuts to the drinking and clean water revolving loan fund programs? How will EPA help meet growing water infrastructure needs going forward?

2. Grants under the BEACH Act have enabled states to monitor more beaches and monitor them more frequently. In fact, EPA has credited BEACH Act grants with tripling the number of beaches monitored nation-wide. However, the Administration has proposed to zero these funds out in FY 2013.
  - a. Many states use this funding to support critical beach monitoring programs. What would be the risks to beachgoers if states were not able to sample as many beaches or test water quality as frequently?
  - b. Given the program's documented results and the anticipated impacts of eliminating these grants, shouldn't it be given important consideration as Congress develops its funding priorities for the upcoming fiscal year?
3. Since 2008 EPA has provided resources to help fund grants that are designed to improve water quality and restore wetlands habitat in the San Francisco Bay. EPA's budget asks to cut over 15% of the funding for such work.

I think it is important to fund this program that improves water quality in one of America's largest estuaries. Could you please describe why the Agency decided to cut these important funds? Do you believe EPA has an important role to play in efforts to restore the San Francisco Bay?

4. According to the EPA, the value of the health improvements resulting from the Agency's top 15 clean air enforcement actions last year equaled up to \$36 billion, including reductions in toxic soot and smog-forming pollution.

Can you please describe some of the real world benefits of EPA's enforcement of our nation's landmark public health and environmental laws?

5. The EPA says that it is working to modernize and improve its enforcement program, including by investing in modern monitoring technologies, electronic reporting by facilities, and increased public transparency.



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Can you please describe some of the specific activities that EPA will take to achieve these outcomes and the benefits of these actions for families and others who can be harmed by pollution – as well as the benefits for businesses that follow the law?

6. The Office of Children's Health Protection plays a vital role in EPA's mission to protect public health. When we safeguard the health of the most vulnerable in our society, we also help to protect other people in our communities.

The budget asks for an additional \$3.4 million for the Office to enhance EPA's work to protect children's health, including by implementing voluntary school sitting guidelines and developing environmental health guidelines. Could you please describe the status of these actions in a little more detail, including the timelines for completing any work that remains in their implementation?

7. The Office of Children's Health Protection is like the Agency's conscience – it is there to help ensure that all of EPA's actions protect children's health. The budget requests additional funding to help the Office fulfill this important function.

Can you please describe some of the steps that the Office will take, including in rulemaking processes and the development of risk assessments and guidance, to help ensure that the EPA protects children's health?

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8. The budget asks to eliminate all EPA funding (\$8M) for state and tribal programs that reduce radon's health threats and funding for EPA's radon reduction work in the regions (\$1.7M).

Radon is a radioactive gas that can seep into homes and other buildings. According to the EPA, indoor radon is the second leading cause of lung cancer. We should invest in safeguards against this dangerous gas.

Can you please describe the types of protections that could be reduced if the funding cuts are enacted?

9. The budget asks to cut \$33 million from Superfund's long-term cleanup program. EPA says that this could reduce the site investigation and cleanup studies started by the Agency, from an estimated 22 in FY 2012, to 11 in FY 2013. EPA also says that 3,200 sites currently need to be assessed for contamination -- but that assessments will drop from an estimated 900 in FY 2012 to 650 in FY 2013.

How dramatic are the impacts of these proposed cuts on EPA's ability to identify new sites and to move forward on needed long-term cleanups?

10. The budget asks to cut \$3.3 million from the Brownfields program, with roughly \$1.6 million coming from EPA funds for cleanup agreements and \$1.7 million coming from EPA funds to help state and tribal cleanup programs.

What steps can EPA take to minimize the impact on these important programs and clean up activities?

11. The budget proposes to cut \$14 million from the Diesel Emissions Reduction Act (DERA) program, which helps to retrofit or replace old, heavily-polluting diesel engines that create toxic soot and smog-forming pollution.

The Agency says that it will attempt to better target funds by using rebates and revolving loan funds. Can you please describe how these new tools would increase the effectiveness of the DERA program?

12. According the Agency, "Funding to states and tribes in the State and Tribal Assistance Grants (STAG) account continues to be the largest percentage of the EPA's budget request, at 40% in FY 2013... For Categorical Grants [to states], \$1.2 billion is provided," with a proposed \$65 million increase to state and local air quality officials.

Can you describe the importance of these funds for protecting the health of families and children, and for helping to make states effective partners in providing such protections?

13. The budget requests funds for EPA to help implement and expand the National Program to reduce greenhouse gas pollution and improve fuel efficiency standards for on- and off-road vehicles.
- a. Can you please describe some of the benefits, including to public health, from this program and the types of activities that EPA will undertake to build on the Program's past success?
  - b. The EPA is also currently working to implement standards for cars manufactured between 2017 and 2025. Is the EPA working to choose a mix of technologies to both reduce greenhouse gas emissions and other forms of air pollution, such as toxic soot and smog-pollution, while improving fuel efficiency standards?

14. In 1990, Congress told EPA to reduce hazardous air pollutants that can cause cancer or birth defects.

This year, EPA published standards to reduce toxic air pollutants, including mercury, lead, chromium, and acid gases from coal- and oil-fired power plants.

Can you please describe the benefits of this rule for protecting human health and also for creating jobs?

15. Before Congress enacted landmark, bipartisan environmental legislation to protect public health, we lived in a far different country. Rivers caught on fire, and in 1966, air pollution was so bad that during Thanksgiving, smog blanketed the Eastern U.S. -- researchers concluded that it killed 24 people a day from November 24 to the 30th.

Can you please describe some of the benefits to public health and the nation's economy from EPA's implementation of health and environmental safeguards?

16. The Agency has requested additional funds to support research into the development of sustainable molecular designs for materials, which EPA anticipates will help manufacturers, including of producers of nanotechnology materials, create safer chemicals and products.

Could you please describe how the Agency will spend these resources, the particular types of products and processes that EPA will focus such funding on, and the anticipated health and economic benefits of this program?

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17. The Agency has requested funds to continue its work on reducing greenhouse gas pollution from refineries.

Could you please describe the potential for these efforts to increase efficiencies and reduce operating costs, while also reducing pollution?

18. The EPA is working with states to develop and enhance Clean Air Act permitting programs to reduce dangerous air pollution, including greenhouse gas emissions.

Could you please describe how the Agency's activities augment state efforts to address pollution, including specific examples of where federal resources provide benefits to state programs and public health protections?

19. Please describe the current status of EPA's decision-making process on creating a drinking water standard for perchlorate? In your response, please include an anticipated timeline for the Agency to complete its decision-making and the dates that EPA will complete key interim steps in its decision-making process. If the Agency anticipates that a drinking water standard for perchlorate may take more than two years from now, will the Agency commit to finalize the interim health advisory on perchlorate in the next year?

- 
20. Please describe the steps that EPA has taken to assess and address potential threats to public health from hexavalent chromium (chrome 6) in drinking water? In your answer, include the Agency's timeline for the completion of any risk assessment and the use of such information in a determination of whether to create a drinking water standard or health advisory for hexavalent chromium in drinking water?

Senator Tom Carper

1. Before our Committee last year you agreed that there remains tremendous opportunities to provide for diesel emissions reductions under the Diesel Emissions Reduction Act or DERA, do you still believe that is true?
2. Do you believe the DERA grant program – which provides grants to all 50 states for clean diesel projects– has been a successful tool for the EPA to accelerate the replacement or retrofit of old diesel engines? Has the EPA had any difficulties distributing funds through the grant program? Are state and private dollars leveraged with these clean diesel grants – making the grants stretch farther?
3. It is my understanding that in the President's budget there is a \$15 million reduction in DERA funds from fiscal year 2012 and an elimination of the grant program – allowing the EPA to only distribute money through loans or rebates. Is that your understanding? Has the EPA ever used rebates to distribute DERA funding?
4. Last year, the Environmental Protection Agency expects to award a total of \$9.9 million in grants to 35 eligible states and territories. This year, the President's budget includes zero for the BEACH Act grant program. Delaware's beaches attract more than 7 million visitors each year, and beach tourism generates more than 800 million dollars in direct sales and supports 15,000 jobs in local communities.

Given the enormous environmental, public health and economic benefits the BEACH Act grant program brings not only to Delaware residents but also to residents all across our country, I am concerned why these funds have been eliminated.

It is our understanding the EPA believes that state and local agencies now have the ability to implement water quality monitoring and notification programs on their own and that is why the Administration has proposed eliminating the BEACH Act grant program in the FY 2013 budget. Can you please list the states your agency has confirmed has the ability to implement water quality monitoring and notification on their own and do not need BEACH Act grant assistance?

Senator Sheldon Whitehouse

1. EPA's proposed budget would increase Section 105 grants to state and local air quality agencies by \$65 million.

OMB has directed EPA to move funds for monitoring fine particulate matter (soot) from the Section 103 program to Section 105, which would trigger a state match requirement. State agencies will be expected to pay a larger share of monitoring costs.

Is part of the \$65 million increase proposed for the Section 105 grant program, funds that used to go to the Section 103 program? Which means, they do not reflect an increase in funding to states?

2. RI DEM faces severe budget shortfalls as it is. In 3 years, the Air Resources Office of the RI Department of Environmental Management has reduced its staff from 30 to 24. That's a 20% reduction in staff in the past four years. (This number had dropped to 20; however, federal funds enabled DEM to fund four more positions.) I am very concerned about additional cost burdens on this skeleton crew.

On behalf of Director Coit and the entire Air Resources Office at RI DEM, will you work with us to keep air quality monitoring funds in Section 103?

- 
3. EPA is proposing to implement a new state funding formula, which could result in a 27% drop in relative funding to the New England states. We appreciate that EPA would phase the formula in, so that no Region would lose more than 5% of the relative share of funding in the first year.

This might be fair if EPA's proposed level of funding for Section 105 grants is retained throughout the budget process. However, if Section 105 grants are reduced, will you agree to delay implementation of the new formula, so that Rhode Island doesn't see a real reduction to its already low Section 105 funding?

Senator James Inhofe

1. Following the vacation of the “migratory bird rule” in *SWANCC*, EPA and the Corps new guidance adhered to guidance that established jurisdiction through hydrological connection. In his *Rapanos* concurrent opinion, Chief Justice Roberts commented on EPA and the Corps lack of ability to complete rulemaking following *SWANCC* and stated the agencies had continued to adhere to an “essentially boundless view of the scope of its power. The upshot today is another defeat for the agency.” How does the Administration’s policy, as articulated in the new guidance, differ from the “essentially boundless view of the scope of its power” that was overturned by the Supreme Court?
2. Will EPA interpret future Supreme Court plurality decisions in the same fashion as *Rapanos* – using both the plurality and concurrent opinion equally?
3. On May 12, 2011, at a briefing with my staff, EPA staff promised that they would provide responses to the comments received on the then proposed guidance document “Draft Guidance on Identifying Waters Protected by the Clean Water Act.” In a December 12, 2011 letter from the US Army Corps of Engineers stated that it was “clearly stated in the notice on May 2, 2011, that the guidance would not go into effect until final guidance was issued after making changes in response to substantive comments.” A letter from EPA on December 8, 2011 stated that EPA had received over 230,000 comments. On February 22, 2012, EPA sent the guidance to OMB for final review. Please describe, in detail, what changes were made to the February 22, 2012 document in response to substantive comments. Please cite the changes in the guidance and the docket number or numbers of the substantive comments.
4. Does EPA plan to issue responses to the comments received on the guidance as was promised to my staff at the May 12, 2011 meeting?
5. Since EPA has committed to working on a rulemaking to address the same issues addressed in the guidance. Why, then, is the guidance necessary?
6. Is EPA still committed to working on rulemaking?
7. When thinking about jurisdiction, does EPA see a difference between scientific connectivity of waters and legal limits under the CWA? Please explain.

#### Nutrients

8. On December 8, 2011, the state of Florida sent EPA a letter announcing that the Environmental Regulation Commission had approved numeric nutrient criteria for lakes, spring vents, streams and certain estuaries. When does EPA expect to make a determination on the rule and does EPA intend to accept the rule in full?
9. Ms. Jackson, last year, you testified that EPA’s position was that States are in the best position to address phosphorus and nitrogen pollution in waters and EPA was not planning to do a TDML specifically for the Gulf of Mexico and Mississippi watershed. Is it still the position of EPA to continue working with States to address nutrient pollution and instead set federal numeric nutrient criteria for the Gulf of Mexico and Mississippi watershed?
10. In July 2008, several environmental groups petitioned the EPA to set extensive numeric nutrient water quality criteria and nutrient TMDLs throughout the Mississippi River Basin and the

northern reaches of the Gulf of Mexico. In July 2011, your agency denied that petition, reasoning that the best way to address nutrient issues in the watershed is for EPA to develop collaborative solutions with the states, other federal agencies like USDA, and stakeholders at the regional and community levels. In February 2012, several environmental groups sued EPA in federal court in the Eastern District of Louisiana claiming that EPA wrongly denied their petition. I have to say that I agreed with your agency's decision to not accept that petition and instead collaborate with states like Louisiana in managing the quality of their rivers and streams. I know you can't comment on the particulars of this lawsuit, but I would appreciate knowing more about EPA's cooperative efforts with the Mississippi Basin states and the basis upon which your agency denied the petition last year. Will you provide a list of ongoing activities in the Mississippi Basin that EPA is either aware of or coordinating to address these matters?

11. In trying to make sure that nutrient regulations are based on sound science, how is EPA going to distinguish which scientific evidence is of sufficient quality to be used in making decisions?
12. The ways in which nutrients have ecosystem effects are very dependent on a number of other key variables, including but not limited to flow conditions, temperature, light, and how algae that grows in response to nutrients is removed from the system. How are you going to make sure that any standards for nutrient concentrations reflect the related key variables and site specific conditions in a way that is protective of the waterways, but not unnecessarily stringent?
13. How are you going to assess and verify the likelihood of any nutrient standards actually achieving measurable and cost effective benefits?
14. What are the legal barriers that EPA sees to allowing NPDES holders, like POTWs, to meet nutrient reduction requirements through a credit trading system?

#### NPDES Permits and Conflict of Interest

15. Section 304 of the Clean Water Act directed USEPA to develop regulations to prevent an individual that receives "significant" income from a permittee or permit applicant from sitting on a water quality authority that reviews and issues NPDES permits. USEPA has defined significant to be income in excess of 10% of an individual's annual income. This test applies to immediate family members also. Please explain the basis of the decision that led to the determination that a 10% income threshold was the appropriate way to protect against conflicts.
16. The current use of income restrictions to define conflict of interests in the Clean Water Act program implementation appears novel. Do other USEPA programs rely on a similar income test? If not, what is the basis to avoid conflicts of interest from arising?
17. It has come to the committee's attention that USEPA Office of Water is considering ways in which it might revise the income restriction rule to better reflect the realities and complexities of implementing the NPDES permit program, the reach of which has greatly expanded over the years since passage of the Clean Water Act. Please explain how the agency envisions developing alternatives that would ensure that qualified individuals can be appointed to water quality authorities using a true conflict of interest test.

#### Hexavalent Chromium

18. EPA needs an occurrence database to identify the levels of hexavalent chromium in drinking water and including hexavalent chromium in the final unregulated contaminants monitoring rule

will provide EPA with these data. We are also told that EPA, in collaboration with laboratories and utilities, has just released an analytical method that can detect hexavalent chromium at levels lower than 1 part per billion. Now that you have that method, we are told it takes about 3 years for EPA to build the occurrence database. Is that correct? When will the occurrence data gathering begin?

19. We are aware that water utilities have been working for quite some time to identify water treatment technologies to remove hexavalent chromium from drinking water. We also know that a final report of this work is about to be released and that the water utilities are working to identify the costs for the identified technologies so that they can provide input to EPA as it works to identify the treatment options. Thus, EPA is depending on the work of the water utility industry for input into the standard setting process. Am I correct that EPA needs to have data on treatment technologies and that this data will be helpful as EPA establishes a drinking water standard?
20. In previous testimony, Dr. Anastas outlined how EPA is working to respond to criticisms from GAO, National Academy of Sciences, and others about quality and timeliness in the IRIS assessment process. Dr. Anastas outlined a series of activities that EPA is taking to improve IRIS assessments. I want to thank EPA for responding to calls for improving the overall IRIS process. I assume that among the reasons that EPA is restarting the oral assessment for hexavalent chromium is to ensure that:
  - EPA has the time to apply these improvements to the hexavalent chromium assessment;
  - EPA gets a chance to respond to the many critical comments from EPA's expert peer review panel on the draft;
  - Your staff gets an opportunity to review and include the most recent studies that will supplement the science database on hexavalent chromium with information relevant to humans and current drinking water levels.

In previous hearings before this Committee, we have asked that as head of EPA you ensure that decisions made on contaminants in water are made based upon the best information and most current science. Will your next assessment of hexavalent chromium address all of my points?

21. Administrator Jackson, your agency has the ability to prepare a limited number of chemical assessments per year. In the past to augment this process, EPA has asked industry to undertake voluntary efforts to develop and present chemical assessments to EPA. Such programs have included the VCEEP, High Production Volume Chemicals and the now obsolete ChAMP. In Europe, the basic underpinning for REACH depends upon industry prepared assessments. Nonetheless, some demonize the work of industry creating confusion - we want industry to step up and develop materials and assessments that are reviewed by governmental agencies and undergo research because of the limited governmental resources, yet when they do, they are villainized for their efforts. It seems to me that science and scientific assessments should be judged on the basis of their quality, and objectivity, and whether they were conducted in accordance with standard practices and subjected to a quality review. Science should not be judged based upon who funded or who conducted it. Do you agree that quality science can be funded from multiple sources - including industry, and what steps is EPA taking to ensure that science is judged on its quality and not its funding source?

#### Perchlorate

22. The Safe Drinking Water Act mandates that the EPA ensure that the "best available science" be applied in setting MCLs. On February 2, 2011, U.S. EPA issued a Final Regulatory determination



on Perchlorate, announcing the agency's intent to set an MCL for that contaminant. What specific steps are being taken by the agency to obtain the best possible scientific information in this rulemaking?

23. What peer-reviewed studies, if any, has the agency received, in the time since the regulatory determination, that it considers relevant in establishing the "best available science"?
24. Given the notably large number of peer-reviewed studies available on health effects of perchlorate—and a National Academy of Science panel report—how will the agency involve scientists outside the agency to achieve the statutory standard, the "best available science"?
25. The term "best available science" also includes the notion of what is feasible and achievable. Would you please furnish the subcommittee with your schedule milestones for obtaining outside input on economics and cost, pursuant to the Health Risk Reduction and Cost Analysis (HRRCA) provisions of the Safe Drinking Water Act?

#### Fuel Quality

26. EPA and the Administration have sent mixed messages regarding Tier 3 gasoline regulations, which some have estimated could add up to \$.09 per gallon to the cost of gasoline. Last July EPA stated they would propose the rule in December 2011 and then recently postponed it to March. On February 29, you went on to tell Rep. Lummis that it would be "at least a year" before Tier was finalized. Can you clarify your timeline for proposing and finalizing Tier 3 gas regulations? Are you planning on waiting until after the election to push through this expensive rule that will raise gas prices for consumers?
27. I understand that in response to a question by Congressman Upton, you said that the final Tier 3 rule would not include octane and RVP. Might EPA be considering reducing RVP under a separate rule?
28. Last July EPA stated that the antibacksliding study, which is long overdue to Congress, will be published in December 2011 as part of the Tier 3 proposed rule. Did EPA complete the antibacksliding study? When will EPA publish the study? Might EPA be considering reducing RVP as a result of the antibacksliding study?
29. What fuel does EPA require for manufacturer new vehicle emissions and MPG test certification? My understanding is that this fuel doesn't contain any ethanol. When does EPA plan to change its test fuel to more accurately reflect the fuel in the marketplace? What will that fuel be in terms of ethanol concentration?

#### Renewable Fuel Standard Program (RFS2)

30. Recently, there has been quite a bit of discussion about the ethanol blendwall, the time when the RFS2 ethanol mandate exceeds 10% of the gasoline demand in the United States.
  - a. When does EPA anticipate the blendwall?
  - b. How does EPA compute this timing?
  - c. How would the E10 blendwall impact fuel supplies in the U.S.?
  - d. What steps does EPA plan to take to address the E10 blendwall?

31. I've been encouraged by the fact that EPA has utilized its discretion to waive down requirements for cellulosic-based fuels. For example this year RFS2 required 500 million gallons of cellulosic biofuel which EPA adjusted to a lower number. Next year cellulosic requirement increases to 1 billion gallons and the RFS2 volumes continue to increase annually to year 2022. However, to-date EPA has never reduced the advanced and total renewable biofuel mandate in proportion to the cellulosic waiver. Will EPA continue to utilize its discretion to lower the cellulosic requirement? Starting with the 2013 RFS2 standards, will EPA reduce the advanced and total renewable volumes in proportion to the cellulosic reductions, especially in light of the increasing cellulosic mandates? If no, why not?
32. Cellulosic biofuels, per EPA EMTS data, are not commercially available. Yet obligated parties were required in 2011 to buy cellulosic biofuel credits at \$1.13 per gallon for a fuel that does not exist. This annual cost of course would be passed on to consumers in the form of higher prices at the pump. EPA has the authority to eliminate this financial burden when the actual cellulosic production is nil or lower than projections. What are EPA's plans to address this issue?
33. When EPA developed RFS2 regulations it structured the program so that liability would fall on the shoulders of the Obligated Parties. This has led to absurd results such as having to buy fuel that doesn't exist and being liable, despite good faith efforts to comply, for fraudulent RINs generated by biofuel producers that EPA helped to facilitate. In fact, EPA listed these producers as "registered" and "accepted" on their website even after the NOV's were sent to companies. What is EPA doing to ensure a more equitable distribution of responsibility for RFS2 compliance?

#### E15 Waiver

34. EPA approved the use of E15 in MY2001 and newer vehicles based on a catalyst durability test program conducted by DOE. Preliminary results from the Coordinating Research Council (CRC) testing have indicated emissions problems associated with higher ethanol blends (e.g., 5 out of 8 models failed the engine durability test on E20; problems with fuel level sensors have also been also seen with E20). These and other data, as well as planned follow-ups, were communicated to the Agency and were placed in the EPA E15 rulemaking docket before the October 2010 waiver decision. Why did EPA choose to ignore the CRC scientific evidence in its waiver decision? If upon completion of the CRC testing and data analysis E15 is found to cause emissions problems, will EPA reconsider its E15 waiver decision?
35. The EPA E15 waiver allows use of E15 in MY 2001 and newer vehicles. Virtually all vehicle owners' manuals up to 2011 MY vehicles specify E10 and do not authorize the use of higher ethanol blends including E15.
  - a. How does EPA interpret the auto manufacturers concerns given that E15 is not recommended and warranty coverage is not extended for non-flex fuel vehicles?
  - b. Can automakers deny warranty coverage based solely on use of E15?
  - c. Will EPA require automakers to change their manuals for 2012+ MY vehicles to allow for E15?
  - d. Does EPA have an estimate of the number of 2001 through 2004 MY vehicles that are Tier 1 technology, and thus not represented in the DOE catalyst testing that EPA relied upon to grant the E15 waiver?
  - e. What is EPA's estimate of the potential cost to consumers for engine repairs and other potential environmental damage associated with these Tier1 MY 2001 to 2004 vehicles?

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36. In the 1970s and '80s there were significant rates of leaded gasoline misfueling even though leaded pump nozzles did not fit in unleaded-only vehicles. This misfueling occurred primarily for two reasons: 1) leaded gasoline was less expensive to purchase and 2) some motorists preferred leaded gasoline. EPA has decided that different sized pump nozzles will not be necessary and is instead relying on a warning label to prevent misfueling.
- a. Aren't these same reasons for leaded gasoline misfueling likely to exist when E15 is marketed?
  - b. Has EPA estimated the potential costs in damaged vehicles and engines, including both the cost to consumers for repairs and in damage to the environment, that would result from the misfueling of vehicles and engines not covered by the E15 partial waiver?
37. EPA has provided draft E15 materials compatibility guidelines for the underground storage tank system (UST); these refer to three approval processes, including Underwriters Laboratories (UL) certification.
- a. What are EPA's risk assessments for ethanol release in each of these three approval processes?
  - b. Is E15 compatible with existing underground leak detection equipment?
  - c. Will gasoline retailers be required to replace their existing underground storage tanks with UL certified tanks before marketing E15?
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38. EPA states that its UST regulations and compatibility guidelines are intended to protect groundwater and detect and prevent releases of petroleum from UST systems. Yet, after stating that "very little data exists pertaining to the compatibility of UST equipment with ethanol blends" and acknowledging UL literature suggesting that "mid-level ethanol blends [e.g., E15] may have the most degrading effect on some UST system materials" and that "most UST systems currently in use are likely to contain components that were not designed to store ethanol blends beyond 10%" and "may not be certified by UL or another independent testing laboratory for use with these blends," EPA has proposed formally recognizing two alternatives to the current industry practice of relying on UL certification to demonstrate compatibility. These alternatives are: (1) manufacturer approval and (2) "another method determined by the implementing agency to sufficiently protect human health and the environment."
- a. Given the lack of compatibility testing and data recognized by EPA, what is the basis for EPA's proposal to accept "manufacturer approvals" to demonstrate compatibility? Is the manufacturer required to perform any tests or to reference any studies or to otherwise substantiate a reasonable basis for such approval?
  - b. Will EPA require the state implementing agencies to substantiate their determination that another method will "sufficiently protect human health and the environment" before such can be relied upon to demonstrate compliance with EPA's compatibility requirements?
39. Tests published in November 2010 by NREL/DOE reveal materials compatibility issues with dispensing equipment. EPA has not provided E15 materials compatibility guidelines for dispensing equipment. How does EPA plan to address this issue?
40. What is the anticipated cost to gasoline retailers, most of whom are small business owners, to comply with the EPA required materials compatibility specifications for E15 for underground storage tanks systems, including piping, seals, fittings, and fuel dispensers?
- a. What is the basis for EPA's estimates?

- b. Does EPA foresee these anticipated costs to ultimately be reflected in the price of motor fuels at the retail pump?
- 41. What additional legal and technical barriers exist that will prevent the marketing of E15? What is the anticipated timing for removal of these barriers?
- 42. Is EPA concerned about potential liability associated with the commercialization of E15?
  - a. Who does EPA assume would bear the liability burden should infrastructure, vehicle and/or engine problems arise from the use of E15?
  - b. What liability protection can those parties receive?

#### CAFÉ

- 43. There's speculation that automakers agreed to your GHG tailpipe proposal in exchange for EPA pushing through discretionary Tier 3 gasoline regulations, which are unpopular and are being slow rolled. A recent Auto Alliance quote in the *WSJ* adds to this speculation: "If now is not the right time for fuels, then it may well not be the right time for autos." Did your agency have an agreement with automakers to support Tier 3, the burden of which falls on the refining sector, in exchange for the automakers cooperation with fuel economy standards?

#### Air

- 44. There has been a great deal of concern that the MACT standards for new electric generating facilities are so strict that no new coal-fired generating stations can be built. Information in the rulemaking docket indicates that the new-unit MACT standard for acid gases was set using performance data from the Logan and Chambers Units. But EPA posted a chart in the docket showing six separate test results for Logan, with Logan failing the standard five out of six times. Similarly, the Chambers units failed five out of six tests.

You have told the public that the new-unit MACT standards will not prevent new units from being built, yet EPA's own data seems to show that the very units you used to set the standard would fail compliance tests five out of six times.  
What can you do to assure the public that, in fact, these standards do not result in a de facto ban on new coal units?

- 45. In December 2000, EPA listed Electric Utilities as sources to be regulated under the Clean Air Act's MACT provisions due to concerns about hazardous air pollutants, particularly mercury.

This is interesting because the entire justification for the rule – and by that I mean over 99 percent of benefits the Agency claims – are from the "co-benefit" of reducing fine particulate matter (PM).

In fact, when one looks at the direct benefits of the rule the Agency can claim only between \$500 thousand to \$6 Million in benefits from reducing mercury. This is very little direct benefit for a rule the Agency estimates will cost \$9.6 Billion annually. In fact, the costs exceed the benefits by a 1,600 to 1.

It also seems to be an extremely inefficient way to reduce PM, given the fact that PM is regulated through multiple Clean Air Act programs that are much more flexible than MACT.

In fact, PM is regulated through the National Ambient Air Quality Standards program. But EPA's analysis in the Utility MACT rule shows health benefits coming from reducing fine particles all the way down to natural, background levels. Is EPA considering resetting the fine particle NAAQS to background levels? Why not, given that EPA's health benefits estimates for the MATS rule are based almost entirely on fine particle levels that are below the level of the NAAQS?

#### Superfund and Brownfields

46. EPA's proposed FY 2013 budget increases brownfields administrative costs while decreasing the 128 and the 104(k) grants. Why is EPA paying itself more for doing less work?
47. I previously requested during EPW's hearing that on the Brownfields program that EPA look into saving the taxpayers money for the cost of the Brownfields Conference that EPA funds. Since this conference is a worthwhile and successful event, what steps has EPA taken to evaluate privatizing these costs?
48. When does EPA plan to release its proposed rule on financial assurance under CERCLA 108 (b)?
49. EPA proposed that it has \$1.8 billion in total in unobligated balances for all special accounts as of the end of FY2011. Previously EPA had showed how much of these funds are committed or uncommitted on a per site basis in its public CERCLIS database. Why is EPA not providing this information on its website and to allow for even basic transparency?
50. There is a reduction in funding for federal facility oversight for federal facility cleanups. This will provide greater independence to federal facilities for managing their cleanups. How would the protectiveness of the cleanup be insured? Would this shift more of the burden to the states who also have stretched budget?

#### Electronic Waste

51. Tell me why the President's inter agency task force on electronic waste recommended two standards?
52. Does EPA endorse e-Stewards and the R2 standard?
53. Please explain to me how each standard works?
54. Is the federal government going to be recycling it's overseas computers or will they be recycled abroad?
55. Would not a third party international standard, that is backed up by third party certification, be the model for international organizations?

#### Mining

56. In order for the Committee to provide effective oversight please provide us with a list of 404 Clean Water Act permits that are under review or have been under review from May 11, 2009 to

present time? Please limit the permits to Kentucky, West Virginia, Ohio, Pennsylvania, Tennessee, Alabama, Louisiana, Indiana, Illinois, Wyoming, Montana, and Virginia.

57. Please provide us with the total current up to date cost figure for EPA's watershed assessment for the proposed pebble mine?
58. Is it possible that EPA will use its authorities under CWA 404(q) to designate the proposed pebble mine area as an aquatic resource of national importance?
59. What is the estimated completion date for EPA's watershed assessment of the proposed pebble mine?

#### Hydraulic Fracturing

60. There are serious concerns about how EPA is conducting studies related to hydraulic fracturing, including concerns about a study currently underway to "better understand any potential impacts of hydraulic fracturing on drinking water and ground water." EPA has also requested \$14 million in FY 2013 for hydraulic fracturing research, more than doubling the FY 2012 request for areas the Agency has very little authority to regulate. EPA has issued press releases and findings on studies that have not been peer reviewed and needed further information and testing. EPA has also interjected themselves in areas where states – who are the rightful regulators of hydraulic fracturing – were doing studies and taking appropriate action. Finally, documents obtained by members of Congress from the interagency review of EPA's Utility MACT rule over a year ago show EPA's refusal to recognize more abundant use of natural gas reserves due to predetermined concerns with the "environmental impacts of hydraulic fracturing."
  - a. EPA's recent announcements with regards to the Agency's hydraulic fracturing investigations – the dismissal of the "emergency" order in Parker County, TX, EPA actions in Dimock, PA prior to findings of no concern, and EPA's non-peer reviewed conclusion in Pavillion, WY which has led the Agency to further rounds of testing with the state – have cast serious doubt on the agency's credibility and impartiality in conducting valid scientific studies of hydraulic fracturing. In all of these cases, EPA prematurely linked hydraulic fracturing to serious environmental and human health concerns where it appears the links, and in some instances the concerns themselves, were nonexistent. Given EPA's recent track record in its hydraulic fracturing investigations, how can you assure Congress and the public that, going forward, any preliminary or final conclusions as a result of the agency's studies – including the broad water study underway and the new studies to be funded by the President's latest budget request – are based on transparent and thorough sound science that include state regulators and industry and not preconceived political exercises as some of the Agency's prior investigations appear to be?
  - b. Is EPA concerned that the retrospective sites which have been selected within the study do not have the sufficient baseline information necessary to give the Agency a clear picture of the sites prior to energy development or any known accidents which may have occurred? How is EPA planning to address issues that arrive from a lack of baseline?
  - c. How were these sites selected and are there any sites where EPA was not aware of some report of an accident or water contamination?

61. In Parker County, TX, Dimock, PA, and Pavillion, WY, EPA is studying and in some cases issuing orders or conducting actions related to private drinking water wells. Please list all regulatory authority, and the circumstances that would spur the use of that authority, for EPA to intervene over a State in the regulation, investigation or care of private drinking water wells.
62. In your February 29 testimony before the House Appropriations Committee's Interior and Environment Panel, you stated that while the Pavillion, Wyoming investigation will not be "classified" as a HISA, it will be "treated" as one and added that EPA "will use the [OMB] guidelines for a highly influential scientific assessment." What is the distinction between "classifying" something as a HISA and "treating" it as one and do you commit today to following *all* of the OMB guidelines for a HISA with regards to the agencies ongoing work in Pavillion?
63. The Pavillion study was not peer reviewed prior to its release, and even though it was in draft form, there was a press release accompanying it with findings which scared the public. The larger study is expected to have a draft report released later this fall, and again EPA has indicated that it will not be peer reviewed or reviewed by other scientists prior to its release. What can be done to ensure that this study is carefully reviewed prior to its release? Will preliminary findings be highly publicized as they were in the Pavillion draft?
64. Documents obtained by members of Congress from the interagency review of EPA's Utility MACT rule show EPA's refusal to recognize more abundant use of natural gas reserves due to concerns with the "environmental impacts of hydraulic fracturing." ~~Many comments made~~ throughout this administration – including by yourself and EPA – have touted the importance of natural gas while internal documents coupled with the Agency's actions seem to paint a starkly different picture. Is it the position of EPA that due to "environmental impacts of hydraulic fracturing" the Agency does not believe it will be a suitable tool abundantly used in the future to access the country's vast supplies of oil and gas from shale?
65. In testimony before Congress last year with regards to hydraulic fracturing, you stated that "EPA will use its authorities to protect local residents if a driller endangers water supplies and the state and local authorities have not acted." This in no way aligns with EPA's actions across the country where the Agency has interjected itself: in Parker County, Texas, Pavillion, Wyoming, and Dimock, Pennsylvania – all areas where state and local authorities were taking actions. Could you please comment on specific deficiencies in the actions of the aforementioned states which lead to EPA intervention in each of those instances?

#### Risk Management

66. Administrator Jackson: Late last year, the Office of Solid Waste and Emergency Response announced that EPA intended to change its long standing policy of providing secure access to information from Risk Management Plans to posting all such information on the Internet instead, with no form of control. Even a FOIA request for the information would not be needed. The affected portions of the RMPs contain security-sensitive material, and the current administrative controls for access were put in place for reasons of national security. Being that the information is indeed available, whether under the RMP program, Community Right to Know Laws, or FOIA, to all who request it – including citizens – it is unclear why EPA is taking actions to weaken the protection of security-sensitive information. Why is EPA proposing to release sensitive information that will undermine the efforts of industry to protect facilities, employees and communities?

#### TSCA Reform

67. Has the Obama Administration developed an official position on S. 847?
68. Has EPA developed an estimate of the FTE requirements necessary to implement S. 847? How does that estimate compare to OCSPP/OPPT current human resources?
69. Has EPA assessed what skill sets will be necessary to implement S. 847? How do those needs line up against current staff expertise in OCSPP/OPPT? Has EPA assessed whether it will be able to attract and hire the necessary expertise to fully implement S. 847?
70. EPA relies on contractors to assist in implementing the current requirements of TSCA. What is EPA's budget for implementing the current program, and how does that compare with EPA's assessment of anticipated budget requirements for S. 847?
71. What resources would EPA need to review minimum data set submissions on all existing and new chemicals under this legislation?
72. EPA has proposed a significant change in policy to prohibit claims for confidential treatment of chemical identity, even in health and safety studies where the claim might be appropriately justified and an alternative approach to identification is necessary. This proposal appears to be based on a legal interpretation of TSCA Section 14 that suggests the Agency has no discretionary authority regarding CBI claims, and is subject only to the two statutory prohibitions on disclosure contained in that section. How does this practice compare to other environmental statutes administered by EPA? How does EPA justify the difference in approach in this area? Has the Agency assessed the impact of this proposal on innovation, and the impact of the proposal on incentives to conduct health and safety studies?



Senator David Vitter

1. I would like to note in your new Scientific Integrity Policy you suggest “scientific research and results” should be “presented openly, and with integrity, accuracy and timeliness”. On the issue of timeliness can you explain why it took you a month and a half to share with my office the PWG report on the Ramazzini Institute, and in particular why it took so long if it had been completed in November? In addition, can you also share what actions are being taken on all chemical assessments that integrated Ramazzini’s work?
  2. What is EPA doing to ensure the quality of the research EPA utilizes meets sufficient standards for “sound science” so we don’t run into a Ramazzini type situation again in the future?
  3. Again, to the issue of timeliness, can you tell me when I can expect a response on the letter I sent last June, roughly 10 months ago, along with Senator Inhofe asking numerous scientific questions about the proposed ozone standards?
  4. I know that following the National Academy of Sciences’ review of formaldehyde, your agency received bipartisan concerns related to other chemical assessment work IRIS was completing. Those concerns led to 2012 appropriations providing funding for additional NAS reviews. Can you provide a status update on where negotiations are with the NAS on those reviews and what chemicals you anticipate NAS reviewing?
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5. On the issue of hydraulic fracturing, I would assume you are familiar with Range Resources and their work in Texas, as well as the pending litigation. Does EPA plan on dismissing your order against Range Resources in light of the Texas Railroad Commission finding that the gas was not from Range Resources’ well? As well, are you aware that the judge has dismissed the plaintiff’s complaint that their water well had been contaminated by Range Resources, but is allowing Range Resources’ counterclaim to proceed against the couple for producing a deceptive video that attempted to show their water would catch on fire due to fracking?
    - a. As a follow-up are you aware the judge wrote: “This demonstration was not done for scientific study, but to provide local and national news media a deceptive video, calculated to alarm the public into believing the water was burning”?
    - b. Range Resources has indicated an intention to conduct discovery to determine the extent to which the conduct influenced the EPA. Do you have a course of action for informing the public if EPA’s staff failed to meet standards set forth in your new policy for scientific integrity?
  6. I would assume you are familiar with the case *Sackett v. EPA*, which was decided yesterday by the Supreme Court? And if you are have you had a chance to read the unanimous decision of the court?
    - a. The court decision was pretty damning in terms of EPA policies and procedures under the Clean Water Act. Let me cite Justice Alito: “The position taken in this case by the Federal Government—a position that the Court now squarely rejects—would have put the property rights of ordinary Americans entirely at the mercy of EPA employees”. In light of this unanimous decision by our Supreme Court Justices, can I get a commitment from you that you will not move forward with the Clean Water Act guidance document and will seek to address these challenges rather than expand EPA’s jurisdiction?

7. Late last year, the Office of Solid Waste and Emergency Response announced that EPA intended to change its long standing policy of providing for secure access to information from Risk Management Plans to posting all such information on the Internet instead, with no form or control. Even a FOIA request for the information would not be needed. The affected portion of the Plans contain security sensitive material and the current administrative controls for access were put in place for reasons of national security. Being that the information is indeed available under FOIA to all who request it – citizen, first responder, or government official – it is unclear why EPA is taking actions to weaken the protection of security-sensitive information. Why is EPA proposing to release sensitive security information that will undermine the efforts of industry to protect facilities, employees and communities?
8. What steps is EPA taking to implement its prioritization strategy in a science based way? I see that your budget states that the agency is “committed to . . . achieving transparency in agency decision-making as an integral part of achieving” your mission. And yet, EPA has undertaken a prioritization process to date without making the criteria applied in that process transparent. Will EPA make its criteria and processes for prioritizing chemicals transparent? Will EPA apply its prioritization approach to all chemicals in commerce today, or only those which have already gained attention within EPA and other chemical regulatory bodies around the world? In other words, will EPA take a comprehensive, long term approach to prioritization. Please Explain. Finally, when does EPA expect to release its chemical priorities for 2012, in line with its proposed prioritization approach?
9. Between 1998 and now, chemical manufacturers provided screening level data and information on 2,200 high production volume (HPV) chemicals, representing more than 95% of all chemicals in commerce today, by volume. How has the Agency made use of the HPV data and information to date? Will the Agency make better use of this data and information to prioritize chemicals for further evaluation and assessment?
10. That EPA- European agreement required further development and elaboration, which has not happened, has it? What is the agency doing about formalizing that agreement to make full use of the information on HPVs and other substances so as not to waste resources by requiring duplicative information from industry?
11. Has EPA budgeted additional dollars for its “Action Plans” in 2013? Please explain what is the intention of the agency regarding action plans? Are they continuing, abandoned for something different? Please explain. Will EPA issue any new action plans in 2013? Please explain.
12. Can you please comment on EPA’s more recent interpretation of TSCA’s CBI provisions and why the Agency now thinks TSCA treats confidential chemical identity differently than it is treated under the other five federal environmental statutes? TSCA requires the agency to consider the social and economic impacts of its implementation of environmental laws, does it not? How is EPA going to implement this new policy in a manner that balances the public’s access to information while still protecting industry’s legitimate competitive interests?
13. Do you believe that the regulated community has a firm understanding of the new Chemical Data Reporting (CDR) requirements and adequate time to fully comply with this rule? In the CDR final rule, with its expanded reporting requirement, EPA shortened the timeframe in which industry must prepare the reports for 2011 by three months. EPA has provided companies only up to six months to prepare reports for the 2011 CDR collection year, as contrasted with the 2016 CDR and subsequent CDR reporting periods, in which companies will have six to nine months to prepare the reports.

14. Would the Agency consider extending the reporting submission period to September 30, 2012 to be consistent with future CDR reporting periods and allow submitters adequate time to fully comply with the new requirements?
15. Can you comment on the current and proposed budgets and human resources for TSCA implementation today and compare it to the resources that would be needed to implement either the House bill from 2010 or S. 847?
16. We understand that the NAS has offered to convene this workshop. In this regard, would your agency be amenable to working with NAS on convening this workshop?
17. Given that the EDSP screening costs can be more than 1/2 a million dollars per substance, and that the results of the first round of screening from EPA's issuance of 67 test orders in 2009 and early 2010 will be completed by August or September, do you plan to follow the SAB recommendation in early FY 2013 before issuing additional endocrine screening test orders? If not, why not?
18. Can EPA provide the public with its sector prioritization; explain how it has prioritized sectors; and explain how this prioritization does or does not reflect actual Agency rulemaking?
19. ~~Can EPA provide evidence that the multi-pollutant, sector based approach results in the significant benefits beyond what the Clean Air Act already provides? Would taking this approach for the host of rulemakings, on which EPA already expects to fall behind (p. 219), put EPA even further behind in its fundamental rulemaking responsibilities?~~
20. Can EPA explain why after so many years the NEI database and the processes used to update it are not as robust as the Agency, and stakeholders, would like them to be?
21. Can EPA provide the public with clear information on its discretionary programs and rationale for these programs and associated resources? Have these programs sometimes taken resources that could have been used to stay on schedule with air toxics rulemakings?
22. The press release for EPA's funding request stated it would, "sustain the agency's successes in managing the potential risks of new chemicals coming into the market and accelerating the progress to help ensure the safety of chemicals on the market that have not been tested for adverse human health and environmental impacts." In light of that statement can you provide some more detail regarding the progress the Agency has made since TSCA was passed? Specifically:
  - a. How many PMN's have been submitted to the agency for approval since the program began? How many PMNs were submitted in each of the years 2006 to 2011 inclusive, and for each year, how many substances were subsequently added to the TSCA inventory?
  - b. How many were denied and/or withdrawn?
  - c. With regard to PMN's, how has EPA exercised its authority to require manufacturers to conduct additional testing, labeling, or other limitations? Specifically, how many chemicals have been subject to each of these authorities?

- d. How many times has EPA issued a Significant New Use Rule (SNUR)? Of that number, how many times has EPA prevented or limited the use of chemical?
  - e. What is EPA's annual budget expenditure on TSCA? How many FTEs does EPA employ on TSCA? How many of those FTEs are tasked with chemical assessment responsibilities?
23. Congress recently passed legislation directing EPA to make improvements to the Integrated Risk Information System (IRIS). How much funding has EPA designated to fully implement the recommendations outlined by the NAS in chapter 7 of the formaldehyde report?
24. How does the new Chemical Data Rule change the way the Agency collects use and production information from manufacturers under TSCA? Can you explain how EPA will make use of this information to assess chemicals?
25. Does the EPA believe it's important to prioritize chemicals for assessment under TSCA? What is EPA doing right now to make sure it's focusing its efforts on priority chemicals? What are EPA's longer term plans to prioritize chemicals? Does EPA intend to conduct a screening-level prioritization review for all chemicals in U.S. commerce?
26. I continue to remain concerned about the ongoing non-cancer methanol IRIS assessment that EPA is conducting. As you know, EPA's own External Peer Review panel criticized the Agency's non-cancer draft assessment for being poorly written and requiring significant revisions, and for proposing reference concentration levels that are overly stringent. Based on the comments EPA will have to make significant changes to the draft assessment and its proposed reference levels. Under EPA's current process, EPA can ignore some or all of the peer review comments, and after interagency review publish its final determinations. In keeping with the spirit of an open and transparent scientific process, will you commit to allowing the public to comment on the draft assessment after the Agency incorporates the External Peer Review panel's comments? If not, is there any legal or regulatory provision that is prohibiting you from complying with this request?

AL 13-000-4195

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

April 4, 2013

The Honorable Mathy Stanislaus  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Assistant Administrator Stanislaus,

Thank you for agreeing to testify on Thursday, April 11, 2013, at 10:30 a.m. in 2123 Rayburn House Office Building, at the Subcommittee on Environment and the Economy hearing entitled on a discussion draft entitled "The Coal Ash Recycling and Oversight Act of 2013."

The attached documents provide important details concerning the preparation and presentation of your testimony.

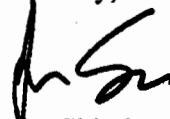
- The first attachment describes the form your testimony must take.
- The second attachment provides you with Electronic Format Guidelines that detail how to file testimony electronically.
- The third attachment provides you the Rules for the Committee on Energy and Commerce.
- The fourth attachment provides you with a Truth-in-Testimony Disclosure form and a Truth-in-Testimony instruction sheet.

Please be aware that, in accordance with the Committee's usual practice, witnesses have a right to be represented by counsel, who may advise the witnesses on their Constitutional rights, but cannot testify. In addition, hearings are open to audio, video, and photographic coverage by accredited press representatives only.

The Honorable Mathy Stanislaus  
Page 2

If you have any questions concerning any aspect of your testimony, please contact Tina Richards of the Energy and Commerce Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Shimkus', is written over the word 'Sincerely,'.

John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

Enclosures: (1) Form of Testimony  
(2) Electronic Format Guidelines  
(3) Rules for the Committee on Energy and Commerce  
(4) Truth-in-Testimony Disclosure form

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**THE FORM OF TESTIMONY  
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE**

**Written Statement:** You are requested to submit a written statement, which may be of any reasonable length and may contain supplemental materials. However, please be aware that the Committee cannot guarantee that supplemental material will be included in the printed hearing record. Your written statement should be typed, double spaced, and should include a one-page summary of the major points you wish to make.

Pursuant to Rule 3(c) of the Rules of the Committee, please provide your written statement no later than two business days in advance of your appearance. This will allow Members and staff the opportunity to review your testimony.

**Oral Presentation:** You will have an opportunity to present an oral summary of your testimony to the Committee. To ensure sufficient time for Members to ask questions, your oral presentation should be limited to five minutes.

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**Printed Hearing Transcript:** Rule XI, clause 2(e)(1)(A) of the Rules of the House requires the Committee to keep a written record of committee hearings which is a substantially verbatim account of remarks made during the proceedings, subject only to technical, grammatical, and typographical corrections. Your testimony, the transcript of the hearing, and any other material that the Committee agrees to include in the hearing record (subject to space limitations) will be printed as a record of the hearing.

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**GUIDELINES FOR THE ELECTRONIC SUBMISSION OF  
CONGRESSIONAL TESTIMONY**

The Rules and procedures of the Energy and Commerce Committee require each witness to submit their testimony in an electronic format prescribed by the Chairman. Testimony submitted in electronic form will be used to produce the printed hearing record, and will be converted to HTML or Adobe Portable Document Format (PDF) and posted to the Committee on Energy and Commerce website at <http://energycommerce.house.gov/>. Your compliance with this requirement will facilitate the distribution of your testimony and help the Committee to minimize the costs of printing the hearing record.

Materials submitted to the Committee must be formatted in Microsoft Word.

Please e-mail your testimony to the Legislative Clerk at [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov). In addition, please include the following in the body of your e-mail: (1) Witness Name, (2) Witness Organization, (3) Name and Date of Hearing, and (4) Subcommittee of Jurisdiction.

The Committee cannot accept testimony submitted on a disk or flash drive.



**Committee on Energy and Commerce**  
**U.S. House of Representatives**  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)

<b>1. Your Name:</b>		
<b>2. Are you testifying on behalf of the Federal, or a State or local government entity?</b>	<b>Yes</b>	<b>No</b>
<b>3. Are you testifying on behalf of an entity that is not a government entity?</b>	<b>Yes</b>	<b>No</b>
<b>4. Other than yourself, please list which entity or entities you are representing:</b>		
<b>5. Please list any Federal grants or contracts (including subgrants or subcontracts) that <u>you or the entity you represent have received</u> on or after October 1, 2011:</b>		
<b>6. If your answer to the question in item 3 in this form is "yes," please describe your position or representational capacity with the entity or entities you are representing:</b>		
<b>7. If your answer to the question in item 3 is "yes," do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?</b>	<b>Yes</b>	<b>No</b>
<b>8. If the answer to the question in item 3 is "yes," please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2011, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed:</b>		
<b>9. Please attach your curriculum vitae to your completed disclosure form.</b>		

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## INSTRUCTIONS FOR COMPLETING THE TRUTH-IN-TESTIMONY DISCLOSURE FORM

***In General.*** The form on the reverse side of the page is intended to assist witnesses appearing before the Committee on Energy and Commerce in complying with Rule XI, clause 2(g) of the Rules of the House of Representatives. The rule requires that:

In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

### **Please complete the form in accordance with these directions.**

1. ***Name (Item 1 on the form).*** Please provide the name of the witness in the box at the top of the form.
2. ***Governmental Entity (Item 2).*** Please check the box indicating whether or not the witness is testifying on behalf of a government entity, such as a Federal department or agency, or a State or local department, agency, or jurisdiction. Trade or professional associations of public officials are not considered to be governmental organizations.
3. ***Nongovernmental Entity (Item 3).*** Please check the box indicating whether or not the witness is testifying on behalf of an entity that is not a governmental entity.
4. ***Entity(ies) to be Represented (Item 4).*** Please list all entities on whose behalf the witness is testifying.
5. ***Grants and Contracts (Item 5).*** Please list any Federal grants or contracts (including subgrants or subcontracts) that the witness personally has received from the Federal Government on or after October 1, 2011.
6. ***Representational Capacity (Item 6).*** If the answer to the question in item 2 is yes, please characterize the capacity in which the witness is testifying on behalf of the entities listed in item 4.
7. ***Affiliated Entities (Item 7).*** Please indicate whether the entity on whose behalf the witness is testifying has parent organizations, subsidiaries, or partnerships that are not represented by the testimony of the witness.
8. ***Grants and Contracts (Item 8).*** Please disclose grants and contracts as directed in item 7.
9. ***Curriculum Vitae (Item 9).*** Please attach your CV to your completed disclosure form.
10. ***Submission.*** Please sign and date the form in the appropriate place. Please submit this form with your written testimony. Please note that under the Committee's rules, copies of a written statement of your proposed testimony must be submitted before the commencement of the hearing. To the greatest extent practicable, please also provide a copy in electronic format according to the Electronic Format Guidelines that accompany these instructions.

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## **RULES OF THE COMMITTEE ON ENERGY AND COMMERCE 113<sup>TH</sup> CONGRESS**

### **RULE 1. GENERAL PROVISIONS**

(a) Rules of the Committee. The Rules of the House are the rules of the Committee on Energy and Commerce (the "Committee") and its subcommittees so far as is applicable.

(b) Rules of the Subcommittees. Each subcommittee of the Committee is part of the Committee and is subject to the authority and direction of the Committee and to its rules so far as is applicable. Written rules adopted by the Committee, not inconsistent with the Rules of the House, shall be binding on each subcommittee of the Committee.

### **RULE 2. MEETINGS**

(a) Regular Meeting Days. The Committee shall meet on the fourth Tuesday of each month at 10 a.m., for the consideration of bills, resolutions, and other business, if the House is in session on that day. If the House is not in session on that day and the Committee has not met during such month, the Committee shall meet at the earliest practicable opportunity when the House is again in session. The chairman of the Committee may, at his discretion, cancel, delay, or defer any meeting required under this section, after consultation with the ranking minority member.

(b) Additional Meetings. The chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to that call of the chairman.

(c) Notice. The date, time, place, and subject matter of any meeting of the Committee scheduled on a Tuesday, Wednesday, or Thursday when the House will be in session shall be announced at least 36 hours (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) in advance of the commencement of such meeting. The date, time, place, and subject matter of other meetings when the House is in session shall be announced to allow Members to have at least three days notice (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) of such meeting. The date, time, place, and subject matter of all other meetings shall be announced at least 72 hours in advance of the commencement of such meeting.

(d) Agenda. The agenda for each Committee meeting, setting out all items of business to be considered, shall be provided to each member of the Committee at least 36 hours in advance of such meeting.

(e) Availability of Texts. No bill, recommendation, or other matter shall be considered by the Committee unless the text of the matter, together with an explanation, has been available to members of the Committee for three days (or 24 hours in the case of a substitute for introduced legislation). Such explanation shall include a summary of the major provisions of the legislation,

an explanation of the relationship of the matter to present law, and a summary of the need for the legislation.

(f) Waiver. The requirements of subsections (c), (d), and (e) may be waived by a majority of those present and voting (a majority being present) of the Committee or by the chairman with the concurrence of the ranking member, as the case may be.

### **RULE 3. HEARINGS**

(a) Notice. The date, time, place, and subject matter of any hearing of the Committee shall be announced at least one week in advance of the commencement of such hearing, unless a determination is made in accordance with clause 2(g)(3) of Rule XI of the Rules of the House that there is good cause to begin the hearing sooner.

(b) Memorandum. Each member of the Committee shall be provided, except in the case of unusual circumstances, with a memorandum at least 48 hours before each hearing explaining (1) the purpose of the hearing and (2) the names of any witnesses.

(c) Witnesses. (1) Each witness who is to appear before the Committee shall file with the clerk of the Committee, at least two working days in advance of his or her appearance, sufficient copies, as determined by the chairman of the Committee of a written statement of his or her proposed testimony to provide to members and staff of the Committee, the news media, and the general public. Each witness shall, to the greatest extent practicable, also provide a copy of such written testimony in an electronic format prescribed by the chairman. Each witness shall limit his or her oral presentation to a brief summary of the argument. The chairman of the Committee or the presiding member may waive the requirements of this paragraph or any part thereof.

(2) To the greatest extent practicable, the written testimony of each witness appearing in a nongovernmental capacity shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two preceding fiscal years by the witness or by an entity represented by the witness.

(d) Questioning. (1) The right to interrogate the witnesses before the Committee shall alternate between majority and minority members. Each member shall be limited to 5 minutes in the interrogation of witnesses until such time as each member who so desires has had an opportunity to question witnesses. No member shall be recognized for a second period of 5 minutes to interrogate a witness until each member of the Committee present has been recognized once for that purpose. The chairman shall recognize in order of appearance members who were not present when the meeting was called to order after all members who were present when the meeting was called to order have been recognized in the order of seniority on the Committee.

(2) The chairman, with the concurrence of the ranking minority member, or the Committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side. The chairman with the concurrence of the ranking minority member, or the Committee by

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motion, may also permit committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side.

(3) Each member may submit to the chairman of the Committee additional questions for the record, to be answered by the witnesses who have appeared. Each member shall provide a copy of the questions in an electronic format to the clerk of the Committee no later than ten business days following a hearing. The chairman shall transmit all questions received from members of the Committee to the appropriate witness and include the transmittal letter and the responses from the witnesses in the hearing record. After consultation with the ranking minority member, the chairman is authorized to close the hearing record no earlier than 120 days from the date the questions were transmitted to the appropriate witness.

#### **RULE 4. VICE CHAIRMEN; PRESIDING MEMBER**

The chairman shall designate a member of the majority party to serve as vice chairman of the Committee, and shall designate a majority member of each subcommittee to serve as vice chairman of each subcommittee. The vice chairman of the Committee or subcommittee, as the case may be, shall preside at any meeting or hearing during the temporary absence of the chairman. If the chairman and vice chairman of the Committee or subcommittee are not present at any meeting or hearing, the ranking member of the majority party who is present shall preside at the meeting or hearing.

#### **RULE 5. OPEN PROCEEDINGS**

Except as provided by the Rules of the House, each meeting and hearing of the Committee for the transaction of business, including the markup of legislation, and each hearing, shall be open to the public, including to radio, television, and still photography coverage, consistent with the provisions of Rule XI of the Rules of the House.

#### **RULE 6. QUORUM**

Testimony may be taken and evidence received at any hearing at which there are present not fewer than two members of the Committee in question. A majority of the members of the Committee shall constitute a quorum for those actions for which the House Rules require a majority quorum. For the purposes of taking any other action, one-third of the members of the Committee shall constitute a quorum.

#### **RULE 7. OFFICIAL COMMITTEE RECORDS**

(a)(1) Journal. The proceedings of the Committee shall be recorded in a journal which shall, among other things, show those present at each meeting, and include a record of the vote on any question on which a record vote is demanded and a description of the amendment, motion, order, or other proposition voted. A copy of the journal shall be furnished to the ranking minority member.

(2) Record Votes. A record vote may be demanded by one-fifth of the members present or, in the

apparent absence of a quorum, by any one member. No demand for a record vote shall be made or obtained except for the purpose of procuring a record vote or in the apparent absence of a quorum. The result of each record vote in any meeting of the Committee shall be made publicly available in electronic form on the Committee's website and in the Committee office for inspection by the public, as provided in Rule XI, clause 2(e) of the Rules of the House, within 24 hours. Such result shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting. The chairman, with the concurrence of the ranking minority member, may from time to time postpone record votes ordered on amendments to be held at a time certain during the consideration of legislation.

(b) **Archived Records.** The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The chairman shall notify the ranking minority member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The chairman shall consult with the ranking minority member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

#### **RULE 8. SUBCOMMITTEES**

(a) **Establishment.** There shall be such standing subcommittees with such jurisdiction and size as determined by the majority party caucus of the Committee. The jurisdiction, number, and size of the subcommittees shall be determined by the majority party caucus prior to the start of the process for establishing subcommittee chairmanships and assignments.

(b) **Powers and Duties.** Each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters referred to it. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the chairman of the Committee with a view toward assuring the availability of meeting rooms and avoiding simultaneous scheduling of Committee and subcommittee meetings or hearings whenever possible.

(c) **Ratio of Subcommittees.** The majority caucus of the Committee shall determine an appropriate ratio of majority to minority party members for each subcommittee and the chairman shall negotiate that ratio with the minority party, provided that the ratio of party members on each subcommittee shall be no less favorable to the majority than that of the full Committee, nor shall such ratio provide for a majority of less than two majority members.

(d) **Selection of Subcommittee Members.** Prior to any organizational meeting held by the Committee, the majority and minority caucuses shall select their respective members of the standing subcommittees.

(e) **Ex Officio Members.** The chairman and ranking minority member of the Committee shall be

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ex officio members with voting privileges of each subcommittee of which they are not assigned as members and may be counted for purposes of establishing a quorum in such subcommittees. The minority chairman emeritus shall be an ex officio member without voting privileges of each subcommittee of which the minority chairman emeritus is not assigned as a member and shall not be counted for purposes of establishing a quorum on any such subcommittee.

#### RULE 9. OPENING STATEMENTS

(a) Written Statements. All written opening statements at hearings and business meetings conducted by the committee shall be made part of the permanent record.

(b) Length. (1) At full committee hearings, the chairman and ranking minority member shall be limited to 5 minutes each for an opening statement, and may designate another member to give an opening statement of not more than 5 minutes. At subcommittee hearings, the subcommittee chairman and ranking minority member of the subcommittee shall be limited to 5 minutes each for an opening statement. In addition, the full committee chairman and ranking minority member shall each be allocated 5 minutes for an opening statement for themselves or their designees.

(2) At any business meeting of the Committee, statements shall be limited to 5 minutes each for the chairman and ranking minority member (or their respective designee) of the Committee or subcommittee, as applicable, and 3 minutes each for all other members. The chairman may further limit opening statements for Members (including, at the discretion of the Chairman, the chairman and ranking minority member) to one minute.

#### RULE 10. REFERENCE OF LEGISLATION AND OTHER MATTERS

All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks of the date of receipt by the Committee unless action is taken by the full Committee within those two weeks, or by majority vote of the members of the Committee, consideration is to be by the full Committee. In the case of legislation or other matter within the jurisdiction of more than one subcommittee, the chairman of the Committee may, in his discretion, refer the matter simultaneously to two or more subcommittees for concurrent consideration, or may designate a subcommittee of primary jurisdiction and also refer the matter to one or more additional subcommittees for consideration in sequence (subject to appropriate time limitations), either on its initial referral or after the matter has been reported by the subcommittee of primary jurisdiction. Such authority shall include the authority to refer such legislation or matter to an ad hoc subcommittee appointed by the chairman, with the approval of the Committee, from the members of the subcommittees having legislative or oversight jurisdiction.

#### RULE 11. MANAGING LEGISLATION ON THE HOUSE FLOOR

The chairman, in his discretion, shall designate which member shall manage legislation reported by the Committee to the House.

## **RULE 12. COMMITTEE PROFESSIONAL AND CLERICAL STAFF APPOINTMENTS**

(a) **Delegation of Staff.** Whenever the chairman of the Committee determines that any professional staff member appointed pursuant to the provisions of clause 9 of Rule X of the House of Representatives, who is assigned to such chairman and not to the ranking minority member, by reason of such professional staff member's expertise or qualifications will be of assistance to one or more subcommittees in carrying out their assigned responsibilities, he may delegate such member to such subcommittees for such purpose. A delegation of a member of the professional staff pursuant to this subsection shall be made after consultation with subcommittee chairmen and with the approval of the subcommittee chairman or chairmen involved.

(b) **Minority Professional Staff.** Professional staff members appointed pursuant to clause 9 of Rule X of the House of Representatives, who are assigned to the ranking minority member of the Committee and not to the chairman of the Committee, shall be assigned to such Committee business as the minority party members of the Committee consider advisable.

(c) **Additional Staff Appointments.** In addition to the professional staff appointed pursuant to clause 9 of Rule X of the House of Representatives, the chairman of the Committee shall be entitled to make such appointments to the professional and clerical staff of the Committee as may be provided within the budget approved for such purposes by the Committee. Such appointee shall be assigned to such business of the full Committee as the chairman of the Committee considers advisable.

(d) **Sufficient Staff.** The chairman shall ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules of the Committee.

(e) **Fair Treatment of Minority Members in Appointment of Committee Staff.** The chairman shall ensure that the minority members of the Committee are treated fairly in appointment of Committee staff.

(f) **Contracts for Temporary or Intermittent Services.** Any contract for the temporary services or intermittent service of individual consultants or organizations to make studies or advise the Committee or its subcommittees with respect to any matter within their jurisdiction shall be deemed to have been approved by a majority of the members of the Committee if approved by the chairman and ranking minority member of the Committee. Such approval shall not be deemed to have been given if at least one-third of the members of the Committee request in writing that the Committee formally act on such a contract, if the request is made within 10 days after the latest date on which such chairman or chairmen, and such ranking minority member or members, approve such contract.

## **RULE 13. SUPERVISION, DUTIES OF STAFF**

(a) **Supervision of Majority Staff.** The professional and clerical staff of the Committee not assigned to the minority shall be under the supervision and direction of the chairman who, in consultation with the chairmen of the subcommittees, shall establish and assign the duties and responsibilities of such staff members and delegate such authority as he determines appropriate.



(b) Supervision of Minority Staff. The professional and clerical staff assigned to the minority shall be under the supervision and direction of the minority members of the Committee, who may delegate such authority as they determine appropriate.

#### **RULE 14. COMMITTEE BUDGET**

(a) Administration of Committee Budget. The chairman of the Committee, in consultation with the ranking minority member, shall for the 113th Congress attempt to ensure that the Committee receives necessary amounts for professional and clerical staff, travel, investigations, equipment and miscellaneous expenses of the Committee and the subcommittees, which shall be adequate to fully discharge the Committee's responsibilities for legislation and oversight..

(b) Monthly Expenditures Report. Committee members shall be furnished a copy of each monthly report, prepared by the chairman for the Committee on House Administration, which shows expenditures made during the reporting period and cumulative for the year by the Committee and subcommittees, anticipated expenditures for the projected Committee program, and detailed information on travel.

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#### **RULE 15. BROADCASTING OF COMMITTEE HEARINGS**

Any meeting or hearing that is open to the public may be covered in whole or in part by radio or television or still photography, subject to the requirements of clause 4 of Rule XI of the Rules of the House. The coverage of any hearing or other proceeding of the Committee or any subcommittee thereof by television, radio, or still photography shall be under the direct supervision of the chairman of the Committee, the subcommittee chairman, or other member of the Committee presiding at such hearing or other proceeding and may be terminated by such member in accordance with the Rules of the House.

#### **RULE 16. SUBPOENAS AND INTERVIEWS**

(a) Subpoenas. The chairman of the Committee may, after consultation with the ranking minority member, authorize and issue a subpoena under clause 2(m) of Rule XI of the House. If the ranking minority member objects to the proposed subpoena in writing, the matter shall be referred to the Committee for resolution. The chairman of the Committee may authorize and issue subpoenas without referring the matter to the Committee for resolution during any period for which the House has adjourned for a period in excess of 3 days when, in the opinion of the chairman, authorization and issuance of the subpoena is necessary. The chairman shall report to the members of the Committee on the authorization and issuance of a subpoena during the recess period as soon as practicable but in no event later than one week after service of such subpoena.

(b) Interviews. The chairman of the Committee may authorize committee staff to conduct transcribed interviews in the furtherance of a Committee investigation.

## **RULE 17. TRAVEL OF MEMBERS AND STAFF**

(a) **Approval of Travel.** Consistent with the primary expense resolution and such additional expense resolutions as may have been approved, travel to be reimbursed from funds set aside for the Committee for any member or any staff member shall be paid only upon the prior authorization of the chairman. Travel may be authorized by the chairman for any member and any staff member in connection with the attendance of hearings conducted by the Committee or any subcommittee thereof and meetings, conferences, and investigations which involve activities or subject matter under the general jurisdiction of the Committee. Before such authorization is given there shall be submitted to the chairman in writing the following: (1) the purpose of the travel; (2) the dates during which the travel is to be made and the date or dates of the event for which the travel is being made; (3) the location of the event for which the travel is to be made; and (4) the names of members and staff seeking authorization.

(b) **Approval of Travel by Minority Members and Staff.** In the case of travel by minority party members and minority party professional staff for the purpose set out in (a), the prior approval, not only of the chairman but also of the ranking minority member, shall be required. Such prior authorization shall be given by the chairman only upon the representation by the ranking minority member in writing setting forth those items enumerated in (1), (2), (3), and (4) of paragraph (a).

## **RULE 18. WEBSITE**

The chairman shall maintain an official Committee website for the purposes of furthering the Committee's legislative and oversight responsibilities, including communicating information about the Committee's activities to Committee members and other members of the House. The ranking minority member may maintain an official website for the purpose of carrying out official responsibilities, including communicating information about the activities of the minority members of the Committee to Committee members and other members of the House.

## **RULE 19. CONFERENCES**

The chairman of the Committee is directed to offer a motion under clause 1 of Rule XXII of the Rules of the House whenever the chairman considers it appropriate.

FRED UPTON, MICHIGAN  
CHAIRMAN

AL13-000-5489

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

### COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

May 10, 2013

The Honorable Mathy Stanislaus  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

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Dear Assistant Administrator Stanislaus,

Thank you for agreeing to testify on Friday, May 17, 2013, at 10:00 a.m. in 2123 Rayburn House Office Building, at the Subcommittee on Environment and the Economy hearing on three legislative proposals entitled the "Federal and State Partnership for Environmental Protection Act of 2013;" the "Reducing Excessive Deadline Obligations Act of 2013;" and the "Federal Facility Accountability Act of 2013."

The attached documents provide important details concerning the preparation and presentation of your testimony.

- The first attachment describes the form your testimony must take.
- The second attachment provides you with Electronic Format Guidelines that detail how to file testimony electronically.
- The third attachment provides you the Rules for the Committee on Energy and Commerce.
- The fourth attachment provides you with a Truth-in-Testimony Disclosure form and a Truth-in-Testimony instruction sheet.

Please be aware that, in accordance with the Committee's usual practice, witnesses have a right to be represented by counsel, who may advise the witnesses on their Constitutional rights, but cannot testify. In addition, hearings are open to audio, video, and photographic coverage by accredited press representatives only.

The Honorable Mathy Stanislaus  
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If you have any questions concerning any aspect of your testimony, please contact David McCarthy or Tina Richards of the Energy and Commerce Committee staff at (202) 225-2927.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Shimkus', with a stylized flourish at the end.

John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

Enclosures: (1) Form of Testimony  
(2) Electronic Format Guidelines  
(3) Rules for the Committee on Energy and Commerce  
(4) Truth-in-Testimony Disclosure form

**THE FORM OF TESTIMONY  
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE**

**Written Statement:** You are requested to submit a written statement, which may be of any reasonable length and may contain supplemental materials. However, please be aware that the Committee cannot guarantee that supplemental material will be included in the printed hearing record. Your written statement should be typed, double spaced, and should include a one-page summary of the major points you wish to make.

Pursuant to Rule 3(c) of the Rules of the Committee, please provide your written statement no later than two business days in advance of your appearance. This will allow Members and staff the opportunity to review your testimony.

**Oral Presentation:** You will have an opportunity to present an oral summary of your testimony to the Committee. To ensure sufficient time for Members to ask questions, your oral presentation should be limited to five minutes.

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**Printed Hearing Transcript:** Rule XI, clause 2(e)(1)(A) of the Rules of the House requires the Committee to keep a written record of committee hearings which is a substantially verbatim account of remarks made during the proceedings, subject only to technical, grammatical, and typographical corrections. Your testimony, the transcript of the hearing, and any other material that the Committee agrees to include in the hearing record (subject to space limitations) will be printed as a record of the hearing.

**GUIDELINES FOR THE ELECTRONIC SUBMISSION OF  
CONGRESSIONAL TESTIMONY**

The Rules and procedures of the Energy and Commerce Committee require each witness to submit their testimony in an electronic format prescribed by the Chairman. Testimony submitted in electronic form will be used to produce the printed hearing record, and will be converted to HTML or Adobe Portable Document Format (PDF) and posted to the Committee on Energy and Commerce website at <http://energycommerce.house.gov/>. Your compliance with this requirement will facilitate the distribution of your testimony and help the Committee to minimize the costs of printing the hearing record.

Materials submitted to the Committee must be formatted in Microsoft Word.

Please e-mail your testimony to the Legislative Clerk at [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov). In addition, please include the following in the body of your e-mail: (1) Witness Name, (2) Witness Organization, (3) Name and Date of Hearing, and (4) Subcommittee of Jurisdiction.

The Committee cannot accept testimony submitted on a disk or flash drive.

**Committee on Energy and Commerce**  
**U.S. House of Representatives**  
Witness Disclosure Requirement - "Truth in Testimony"  
Required by House Rule XI, Clause 2(g)

<b>1. Your Name:</b>		
<b>2. Are you testifying on behalf of the Federal, or a State or local government entity?</b>	<b>Yes</b>	<b>No</b>
<b>3. Are you testifying on behalf of an entity that is not a government entity?</b>	<b>Yes</b>	<b>No</b>
<b>4. Other than yourself, please list which entity or entities you are representing:</b>		
<b>5. Please list any Federal grants or contracts (including subgrants or subcontracts) that you or the entity you represent have received on or after October 1, 2011:</b>		
<b>6. If your answer to the question in item 3 in this form is "yes," please describe your position or representational capacity with the entity or entities you are representing:</b>		
<b>7. If your answer to the question in item 3 is "yes," do any of the entities disclosed in item 4 have parent organizations, subsidiaries, or partnerships that you are not representing in your testimony?</b>	<b>Yes</b>	<b>No</b>
<b>8. If the answer to the question in item 3 is "yes," please list any Federal grants or contracts (including subgrants or subcontracts) that were received by the entities listed under the question in item 4 on or after October 1, 2011, that exceed 10 percent of the revenue of the entities in the year received, including the source and amount of each grant or contract to be listed:</b>		
<b>9. Please attach your curriculum vitae to your completed disclosure form.</b>		

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## **RULES OF THE COMMITTEE ON ENERGY AND COMMERCE**

### **113<sup>TH</sup> CONGRESS**

#### **RULE 1. GENERAL PROVISIONS**

(a) Rules of the Committee. The Rules of the House are the rules of the Committee on Energy and Commerce (the "Committee") and its subcommittees so far as is applicable.

(b) Rules of the Subcommittees. Each subcommittee of the Committee is part of the Committee and is subject to the authority and direction of the Committee and to its rules so far as is applicable. Written rules adopted by the Committee, not inconsistent with the Rules of the House, shall be binding on each subcommittee of the Committee.

#### **RULE 2. MEETINGS**

(a) Regular Meeting Days. The Committee shall meet on the fourth Tuesday of each month at 10 a.m., for the consideration of bills, resolutions, and other business, if the House is in session on that day. If the House is not in session on that day and the Committee has not met during such month, the Committee shall meet at the earliest practicable opportunity when the House is again in session. The chairman of the Committee may, at his discretion, cancel, delay, or defer any meeting required under this section, after consultation with the ranking minority member.

(b) Additional Meetings. The chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to that call of the chairman.

(c) Notice. The date, time, place, and subject matter of any meeting of the Committee scheduled on a Tuesday, Wednesday, or Thursday when the House will be in session shall be announced at least 36 hours (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) in advance of the commencement of such meeting. The date, time, place, and subject matter of other meetings when the House is in session shall be announced to allow Members to have at least three days notice (exclusive of Saturdays, Sundays, and legal holidays except when the House is in session on such days) of such meeting. The date, time, place, and subject matter of all other meetings shall be announced at least 72 hours in advance of the commencement of such meeting.

(d) Agenda. The agenda for each Committee meeting, setting out all items of business to be considered, shall be provided to each member of the Committee at least 36 hours in advance of such meeting.

(e) Availability of Texts. No bill, recommendation, or other matter shall be considered by the Committee unless the text of the matter, together with an explanation, has been available to members of the Committee for three days (or 24 hours in the case of a substitute for introduced legislation). Such explanation shall include a summary of the major provisions of the legislation,



an explanation of the relationship of the matter to present law, and a summary of the need for the legislation.

(f) Waiver. The requirements of subsections (c), (d), and (e) may be waived by a majority of those present and voting (a majority being present) of the Committee or by the chairman with the concurrence of the ranking member, as the case may be.

### **RULE 3. HEARINGS**

(a) Notice. The date, time, place, and subject matter of any hearing of the Committee shall be announced at least one week in advance of the commencement of such hearing, unless a determination is made in accordance with clause 2(g)(3) of Rule XI of the Rules of the House that there is good cause to begin the hearing sooner.

(b) Memorandum. Each member of the Committee shall be provided, except in the case of unusual circumstances, with a memorandum at least 48 hours before each hearing explaining (1) the purpose of the hearing and (2) the names of any witnesses.

(c) Witnesses. (1) Each witness who is to appear before the Committee shall file with the clerk of the Committee, at least two working days in advance of his or her appearance, sufficient copies, as determined by the chairman of the Committee of a written statement of his or her proposed testimony to provide to members and staff of the Committee, the news media, and the general public. Each witness shall, to the greatest extent practicable, also provide a copy of such written testimony in an electronic format prescribed by the chairman. Each witness shall limit his or her oral presentation to a brief summary of the argument. The chairman of the Committee or the presiding member may waive the requirements of this paragraph or any part thereof.

(2) To the greatest extent practicable, the written testimony of each witness appearing in a nongovernmental capacity shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two preceding fiscal years by the witness or by an entity represented by the witness.

(d) Questioning. (1) The right to interrogate the witnesses before the Committee shall alternate between majority and minority members. Each member shall be limited to 5 minutes in the interrogation of witnesses until such time as each member who so desires has had an opportunity to question witnesses. No member shall be recognized for a second period of 5 minutes to interrogate a witness until each member of the Committee present has been recognized once for that purpose. The chairman shall recognize in order of appearance members who were not present when the meeting was called to order after all members who were present when the meeting was called to order have been recognized in the order of seniority on the Committee.

(2) The chairman, with the concurrence of the ranking minority member, or the Committee by motion, may permit an equal number of majority and minority members to question a witness for a specified, total period that is equal for each side and not longer than thirty minutes for each side. The chairman with the concurrence of the ranking minority member, or the Committee by

apparent absence of a quorum, by any one member. No demand for a record vote shall be made or obtained except for the purpose of procuring a record vote or in the apparent absence of a quorum. The result of each record vote in any meeting of the Committee shall be made publicly available in electronic form on the Committee's website and in the Committee office for inspection by the public, as provided in Rule XI, clause 2(e) of the Rules of the House, within 24 hours. Such result shall include a description of the amendment, motion, order, or other proposition, the name of each member voting for and each member voting against such amendment, motion, order, or proposition, and the names of those members of the committee present but not voting. The chairman, with the concurrence of the ranking minority member, may from time to time postpone record votes ordered on amendments to be held at a time certain during the consideration of legislation.

(b) **Archived Records.** The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The chairman shall notify the ranking minority member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The chairman shall consult with the ranking minority member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

## **RULE 8. SUBCOMMITTEES**

(a) **Establishment.** There shall be such standing subcommittees with such jurisdiction and size as determined by the majority party caucus of the Committee. The jurisdiction, number, and size of the subcommittees shall be determined by the majority party caucus prior to the start of the process for establishing subcommittee chairmanships and assignments.

(b) **Powers and Duties.** Each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters referred to it. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the chairman of the Committee with a view toward assuring the availability of meeting rooms and avoiding simultaneous scheduling of Committee and subcommittee meetings or hearings whenever possible.

(c) **Ratio of Subcommittees.** The majority caucus of the Committee shall determine an appropriate ratio of majority to minority party members for each subcommittee and the chairman shall negotiate that ratio with the minority party, provided that the ratio of party members on each subcommittee shall be no less favorable to the majority than that of the full Committee, nor shall such ratio provide for a majority of less than two majority members.

(d) **Selection of Subcommittee Members.** Prior to any organizational meeting held by the Committee, the majority and minority caucuses shall select their respective members of the standing subcommittees.

(e) **Ex Officio Members.** The chairman and ranking minority member of the Committee shall be

ex officio members with voting privileges of each subcommittee of which they are not assigned as members and may be counted for purposes of establishing a quorum in such subcommittees. The minority chairman emeritus shall be an ex officio member without voting privileges of each subcommittee of which the minority chairman emeritus is not assigned as a member and shall not be counted for purposes of establishing a quorum on any such subcommittee.

#### **RULE 9. OPENING STATEMENTS**

(a) Written Statements. All written opening statements at hearings and business meetings conducted by the committee shall be made part of the permanent record.

(b) Length. (1) At full committee hearings, the chairman and ranking minority member shall be limited to 5 minutes each for an opening statement, and may designate another member to give an opening statement of not more than 5 minutes. At subcommittee hearings, the subcommittee chairman and ranking minority member of the subcommittee shall be limited to 5 minutes each for an opening statement. In addition, the full committee chairman and ranking minority member shall each be allocated 5 minutes for an opening statement for themselves or their designees.

(2) At any business meeting of the Committee, statements shall be limited to 5 minutes each for the chairman and ranking minority member (or their respective designee) of the Committee or subcommittee, as applicable, and 3 minutes each for all other members. The chairman may further limit opening statements for Members (including, at the discretion of the Chairman, the chairman and ranking minority member) to one minute.

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#### **RULE 10. REFERENCE OF LEGISLATION AND OTHER MATTERS**

All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks of the date of receipt by the Committee unless action is taken by the full Committee within those two weeks, or by majority vote of the members of the Committee, consideration is to be by the full Committee. In the case of legislation or other matter within the jurisdiction of more than one subcommittee, the chairman of the Committee may, in his discretion, refer the matter simultaneously to two or more subcommittees for concurrent consideration, or may designate a subcommittee of primary jurisdiction and also refer the matter to one or more additional subcommittees for consideration in sequence (subject to appropriate time limitations), either on its initial referral or after the matter has been reported by the subcommittee of primary jurisdiction. Such authority shall include the authority to refer such legislation or matter to an ad hoc subcommittee appointed by the chairman, with the approval of the Committee, from the members of the subcommittees having legislative or oversight jurisdiction.

#### **RULE 11. MANAGING LEGISLATION ON THE HOUSE FLOOR**

The chairman, in his discretion, shall designate which member shall manage legislation reported by the Committee to the House.

(b) **Supervision of Minority Staff.** The professional and clerical staff assigned to the minority shall be under the supervision and direction of the minority members of the Committee, who may delegate such authority as they determine appropriate.

#### **RULE 14. COMMITTEE BUDGET**

(a) **Administration of Committee Budget.** The chairman of the Committee, in consultation with the ranking minority member, shall for the 113th Congress attempt to ensure that the Committee receives necessary amounts for professional and clerical staff, travel, investigations, equipment and miscellaneous expenses of the Committee and the subcommittees, which shall be adequate to fully discharge the Committee's responsibilities for legislation and oversight..

(b) **Monthly Expenditures Report.** Committee members shall be furnished a copy of each monthly report, prepared by the chairman for the Committee on House Administration, which shows expenditures made during the reporting period and cumulative for the year by the Committee and subcommittees, anticipated expenditures for the projected Committee program, and detailed information on travel.

#### **RULE 15. BROADCASTING OF COMMITTEE HEARINGS**

Any meeting or hearing that is open to the public may be covered in whole or in part by radio or television or still photography, subject to the requirements of clause 4 of Rule XI of the Rules of the House. The coverage of any hearing or other proceeding of the Committee or any subcommittee thereof by television, radio, or still photography shall be under the direct supervision of the chairman of the Committee, the subcommittee chairman, or other member of the Committee presiding at such hearing or other proceeding and may be terminated by such member in accordance with the Rules of the House.

#### **RULE 16. SUBPOENAS AND INTERVIEWS**

(a) **Subpoenas.** The chairman of the Committee may, after consultation with the ranking minority member, authorize and issue a subpoena under clause 2(m) of Rule XI of the House. If the ranking minority member objects to the proposed subpoena in writing, the matter shall be referred to the Committee for resolution. The chairman of the Committee may authorize and issue subpoenas without referring the matter to the Committee for resolution during any period for which the House has adjourned for a period in excess of 3 days when, in the opinion of the chairman, authorization and issuance of the subpoena is necessary. The chairman shall report to the members of the Committee on the authorization and issuance of a subpoena during the recess period as soon as practicable but in no event later than one week after service of such subpoena.

(b) **Interviews.** The chairman of the Committee may authorize committee staff to conduct transcribed interviews in the furtherance of a Committee investigation.

AL 14-000-8910

FRED UPTON, MICHIGAN  
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA  
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

**COMMITTEE ON ENERGY AND COMMERCE**

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3841  
April 30, 2014

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator McCarthy:

Thank you for appearing before the Subcommittee on Energy and Power and the Subcommittee on Environment and the Economy on Wednesday, April 2, 2014, to testify at the hearing entitled "The Fiscal Year 2015 EPA Budget."

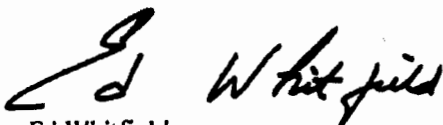
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Wednesday, May 14, 2014. Your responses should be mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to [Nick.Abraham@mail.house.gov](mailto:Nick.Abraham@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittees.

Sincerely,



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



John Shimkus  
Chairman  
Subcommittee on Environment and the Economy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power  
The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachments

### Attachment 1—Additional Questions for the Record

#### The Honorable Ed Whitfield

1. EPA's budget calls for a total of over \$234 million to "Address Climate Change." How much of this relates to the President's climate action plan?
2. With respect to EPA's proposed greenhouse gas (GHG) rule entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units" announced September 20, 2013, we wrote you on November 15, 2013 concerning the statutory provisions of the Energy Policy Act of 2005 ("EPACT 2005"), including provisions codified at 42 U.S.C. §15962(i) and 26 U.S.C. §48A.
  - a. Why has EPA still not provided a written response to that letter?
  - b. Prior to receipt of that letter, were you aware of those EPACT 2005 provisions? Please provide a yes or no response.
  - c. Prior to receipt of that letter, who, if anyone, to your knowledge at EPA was aware of those EPACT 2005 provisions?
  - d. Please provide a detailed explanation of why EPA did not address those EPACT 2005 provisions in the proposed rule you signed in September.
3. On February 5, 2014, EPA posted a "Notice of Data Availability" (NODA) in support of the proposed GHG rule for new power plants referenced above. While EPA posted the NODA on its website on February 5, 2014 and solicited extensive comment, EPA failed to issue a press release or other regulatory announcement notifying the public of the posting of the NODA or the fact that the agency was soliciting comments on the EPAct 2005 provisions. Why did EPA fail to issue a press release or make a public regulatory announcement on February 5, 2014 or shortly thereafter?
4. With respect to EPA's proposed GHG rule for new electric generating units referenced above, EPA proposes to require that any new coal-fired power plants install carbon capture and storage (CCS) technologies that EPA maintains have been adequately demonstrated for use at full-scale commercial power plants.
  - a. During the interagency review process did Department of Energy (DOE) officials or staff provide any written comments on EPA's proposed rule? Please provide a yes or no response.
  - b. During the interagency review process did DOE officials or staff provide written comments on EPA's proposed CCS requirement for new coal-fired power plants? Please provide a yes or no response.
  - c. Are all DOE comments during the interagency review process regarding the proposed rule included in the administrative record for the proposed rule?
5. With respect to the GHG regulations EPA plans to propose for modified and reconstructed electric generating units by June 1, 2014:

- a. Will the agency propose standards that can be achieved at modified and reconstructed coal-fired units using technologies that are currently in commercial service at operating electric generating units?
  - b. What emissions levels does the agency believe are achievable by modified and reconstructed coal-fired electric generating units?
  - c. What technologies currently in commercial service does the agency believe could be used at modified and reconstructed coal-fired units to achieve those reductions?
6. With respect to the GHG regulations EPA plans to propose for existing electric generating units by June 1, 2014:
  - a. Does EPA plan to impose statewide numerical GHG emissions reduction requirements?
  - b. Does EPA plan to propose emissions levels for existing coal-fired units that can be achieved using technologies and control equipment that are currently in commercial service at operating electric generating units?
  - c. What emissions levels does the agency believe are achievable by existing coal-fired electric generating units?
  - d. What existing technologies and control equipment in commercial service does the agency believe could be used at existing coal-fired units to achieve those reductions?
7. EPA has advised the Committee that it is working on GHG standards for aircraft. What is EPA's current schedule for issuing such standards?
8. EPA has advised the Committee that it is working on additional GHG standards for trucks. What is EPA's current schedule for issuing such standards?
9. For each of the following source categories, please indicate whether the agency is currently conducting work relating to potential GHG regulations for those sources, and if the agency is conducting work, the agency's current timetable for performing analyses and making determinations:
  - a. Petroleum refineries
  - b. Pulp and paper facilities
  - c. Municipal landfills
  - d. Iron and steel production
  - e. Animal feeding operations
  - f. Portland cement manufacturing
10. On May 15, 2013, EPA provided a list of GHG Prevention of Significant Deterioration (PSD) permits issued by EPA or States that included 87 permits. Please identify all additional GHG PSD permits that have been issued by EPA or States since that list was prepared.
11. Looking across the range of EPA regulations that affect electric power generation, there are sizable cumulative impacts of Clean Air Act rules, Clean Water Act rules, and other rulemakings that risk substantial retirements of electric generating capacity. Has EPA prepared any analyses to identify the worst case scenarios for electricity generation and reliability that could result from the cumulative impact of its rules?

- a. If yes, will EPA make those risk assessments available to the Committee?
  - b. If no, why hasn't EPA performed such risk assessments?
12. The Energy Information Administration (EIA) issued an update on February 14, 2014 regarding its Annual Energy Outlook 2014 projections and indicated there will be more coal-fired power plant retirements by 2016 than have been scheduled. EIA stated:
 

"Coal-fired power plants are subject to the Mercury and Air Toxics Standards (MATS), which require significant reductions in emissions of mercury, acid gases, and toxic metals. The standards are scheduled to take effect in April 2015, a deadline that is conditionally allowed to be extended by up to one year by state environmental permitting agencies. Projected retirements of coal-fired generating capacity in the AEO2014 include retirements above and beyond those reported to EIA as planned by power plant owners and operators. In these projections, 90% of the coal-fired capacity retirements occur by 2016, coinciding with the first year of enforcement for the Mercury and Air Toxics Standards."

  - a. Is EPA tracking all of the coal-fired electric generating units that will be retiring by 2016, coinciding with the first year of enforcement for the MATS rule? If yes, how many coal-fired electric generating units in the United States are expected to retire by 2016?
  - b. Have any coal-fired electric generating units been granted additional time to comply with the MATS rule beyond 2016? If yes, which units have been granted additional time?
13. On March 10<sup>th</sup>, the *New York Times* published an article entitled: "Coal to the Rescue, but Maybe Not Next Winter" raising concern that there could be significant price increases for electricity because "[s]cores of old coal-fired power plants in the Midwest will close in the next year."
  - a. Is EPA evaluating the cost and reliability concerns that have been raised regarding the pending shutdowns of coal-fired power plants in the Midwest, or other regions of the United States, that have announced they will close in the next one to two years?
  - b. What is EPA's current assessment of these concerns?
  - c. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will be no risks to electric reliability in the next few years?
  - d. Is EPA taking any steps to postpone the retirement of any of these plants to ensure there will not be significant electricity price increases over the next few years?
14. On April 6, 2014, the *Chicago Tribune* published an article entitled: "NRG Chief: Utilities need to 'play it straight'" in which the chief executive of NRG stated that: "The story that has not really been reported is how close the system came to collapsing in January."
  - a. Does EPA agree there were serious reliability concerns in January?
  - b. Since January, has EPA been consulting with DOE, Federal Energy Regulatory Commission and other federal agencies regarding the electric reliability concerns associated with the pending closure of many coal-fired units over the next 1 to 2 years, coinciding with the MATS rule?



- i. If yes, which agencies and which EPA officials are consulting with those agencies? In your response, please identify when such consultations have occurred and which EPA officials have engaged in the consultations.
  - ii. If no, will EPA be consulting with those federal agencies? In your response, if consultations are planned please identify when such consultations will occur and which EPA officials will engage in those consultations.
- 15. In addition to an unprecedented number of shutdowns of coal-fired electric generating units by 2016, coinciding with the compliance date for the MATS rule, on January 24, 2014, the CEOs of five nuclear companies wrote to EPA to express concern about the agency's "Cooling Towers" or "316(b)" rule. They raised concerns that the rule "could trigger the premature retirement of a significant portion of the nuclear fleet."
  - a. Do you have any concerns about the potential "premature retirement of a significant portion of the nuclear fleet" due to EPA rules?
  - b. Is preserving the existing nuclear fleet important to the Administration?
  - c. What steps, if any, is EPA taking to address the concerns expressed by these nuclear companies and can you provide any assurances that EPA's cooling towers rule will not cause or contribute to the premature retirement of a significant portion of the nuclear fleet?
- 16. According to a Feb. 5, 2014 *Greenwire* article, DOE is reportedly analyzing a scenario in which one third of U.S. nuclear power plants retire and the impact that would have on the president's Climate Action Plan. Is EPA also analyzing this scenario?
  - a. Is EPA concerned about the impacts on electric reliability from the premature retirement of nuclear power plants?
  - b. What is EPA doing to ensure its actions do not cause or contribute to the premature retirement of nuclear power plants?
- 17. EPA issues National Ambient Air Quality Standards (NAAQS), but years can pass before it provides guidance about how to implement the new standards, including permitting, to States and stakeholders. Going forward, will EPA commit to providing States and stakeholders with this essential information at the time EPA issues a final NAAQS?
- 18. While NAAQS State Implementation Plans and attainment can take years, a new NAAQS is effective immediately for new air permits. Any delay in EPA's implementation guidance and updating air quality models makes it more difficult for businesses to expand and create jobs. Will EPA issue clear guidance to regions and States encouraging the use of near-term alternatives in any situation where the issuance of new implementation updates is delayed?
- 19. Many of our nation's energy infrastructure projects rely on nationwide permits under the Clean Water Act when building new infrastructure or upgrading and maintaining existing infrastructure. On March 25, 2014, EPA and the U.S. Army Corps of Engineers jointly released a proposed rule addressing waters of the United States.

- a. Has EPA analyzed the potential impact of the proposed rule on building new energy infrastructure or upgrading and maintaining existing infrastructure? If yes, where in the rulemaking documents is that analysis?
  - b. What does EPA consider the impacts of the proposed rule to be on building new energy infrastructure or upgrading and maintaining existing infrastructure?
    - i. Will there be an increase in the need for individual permits?
    - ii. Will there be increases in processing time, cost and manpower to administer and process this increase in individual permits?
    - iii. If these costs were not considered in the proposed rule, why not?
  - c. To the extent that EPA has said in briefings that the agency expects that industry will be able to continue to rely on existing nationwide permits, please explain how the agency arrives at that conclusion and where the analysis is to support that conclusion in the agency's rulemaking documents.
20. The President in executive orders and public statements has said streamlining the permitting process for energy projects – particularly those necessary to support renewable energy projects – is a high priority for this Administration. Individual permits by definition take longer to reach a final decision.
- a. If more individual permits will be necessary for energy projects, can you explain how an increase in the need for individual permits in this proposal is consistent with the President's energy permit streamlining objective?
  - b. In addition, can you point to where in the preamble, regulatory text or economic analysis there is any discussion of direct and indirect impacts on energy infrastructure: for example, the time, manpower and administrative oversight necessary to conduct the increased burden of carrying out such federal requirements as NEPA reviews, potential ESA consultations, historic preservation review, tribal consultations, and responses to citizen suit enforcement?
21. With respect to EPA's proposed "Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters," published Feb. 3, 2014 in the Federal Register:
- a. The proposed rule contemplates complex regulations on some classes of products that have never before been subject to regulation. As a practical matter, this means that EPA may not have the extent of knowledge or expertise, nor has the agency collected as extensive an amount of data, as with other categories that have been subject to regulation. Further, there are an estimated 97 instances in the proposal where EPA specifically asks for comments on various provisions. Given what is expected to be an expedited review process, and our understanding that EPA has indicated that EPA has no plans to enlist contractor support for comment review, how is it possible for the agency to adequately respond to the large volume of comments it is likely to receive on the proposal?
  - b. Given the number of new products which will be covered in the proposed NSPS for residential wood heaters, and the current backlog at OECA, the enforcement and certification arm of EPA, what does the EPA propose to do to protect small businesses who try to certify to the new rule from excessive paperwork backlogs?

22. With respect to the Safe Drinking Water Act and the Clean Air Act, are any of the enhanced oil recovery (EOR) projects referenced in the preamble for the proposed GHG rule for new electric generating units announced on September 20, 2013, complying with anything other than UIC Class II requirements?
- With respect to EPA's Subpart RR-Geologic Sequestration of Carbon Dioxide Rule, are there any Monitoring, Reporting and Verification (MRV) plans that have been submitted to EPA for approval under Subpart RR of the GHG Reporting Program?
  - If yes, how many have been submitted? Also, if yes, how many have been approved under Subpart RR of the GHG Reporting Program?
23. According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its 404(c) authority. Has the agency received any other similar petitions, and if so what has been requested? Has the agency received any petitions concerning the agency's use of 404(c) on any existing permits?
24. Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?
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25. Does EPA have any plans to potentially reevaluate any existing 404 permits pursuant to its 404(c) authority? If so, which ones?
26. The current definition of fill material, finalized in May, 2002, solidifies decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY14 Omnibus appropriations bill included language to prevent the Corps from working on any regulation changing the definition of fill material.
- Has EPA engaged in discussions with the Corps on revising the rule?
  - What is EPA's rationale for potentially revisiting the well-established definition of the Sec. 402 and Sec. 404 programs?
  - What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?
29. Some advanced biofuel developers have proposed that EPA consider a pathway to allow for the generation of RINs under the renewable fuel standard (RFS) when renewable hydrogen is used to displace conventional hydrogen in petroleum refining operations. The pathway, if approved, would create an economic incentive to produce hydrogen from biomass sources, including bio-methane collected from landfill emissions and bio-digesters. Renewable hydrogen, if used in refinery hydro-reactors, would increase the fraction of renewable content in the nation's gasoline and diesel supplies.

Discussions regarding a pathway application have been underway since September, 2013. EPA has indicated that, in order to properly consider this pathway, it needs additional technical information, which stakeholders have developed and provided earlier this year. However, EPA has indicated that, currently, it is unable to assess this information or meet with industry experts to discuss it due to the overwhelming demands on the Office of Transportation and Air Quality's (OTAQ) time from other regulatory matters.

- a. Has OTAQ determined a timetable for resuming consideration of a renewable hydrogen pathway under the RFS?
- b. Has OTAQ determined that it cannot devote time to any further processing of RFS pathways at this time, and if so, how long is that expected to last?

**The Honorable Joe Barton**

- 1. As set forth on EPA's website, the Agency's Clean Air Scientific Advisory Committee (CASAC) provides advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards.
  - a. Are CASAC advisory committee meetings transcribed?
    - i. If yes, are those transcripts made accessible to the public on EPA's website?
    - ii. If not, will transcripts be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
  - b. Are CASAC advisory committee meetings webcast?
    - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
    - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make the webcasts accessible to the public on the Agency's website?
- 2. As set forth on EPA's website, EPA's Science Advisory Board (SAB) advises the agency on technical matters, including reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for EPA regulations.
  - a. Are SAB advisory committee meetings transcribed?
    - i. If yes, are those transcripts made accessible to the public on EPA's website?
    - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
  - b. Are SAB advisory committee meetings webcast?
    - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
    - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 3. As set forth on EPA's website, the Advisory Council on Clean Air Compliance Analysis (COUNCIL) was established to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the Clean Air Act on the public health, economy, and environment of the United States.
  - a. Are COUNCIL advisory committee meetings transcribed?

- i. If yes, are those transcripts made accessible to the public on EPA's website?
  - ii. If not, will transcripts of those meetings be prepared going forward and will EPA make those transcripts accessible to the public on the Agency's website?
- b. Are COUNCIL advisory committee meetings webcast?
  - i. If yes, are those webcasts archived and made accessible to the public on EPA's website?
  - ii. If not, will EPA webcast these meeting going forward, archive the webcasts and make those webcasts accessible to the public on the Agency's website?
- 4. In December 2007 the City of Fort Worth partnered with the EPA on the Alternative Asbestos Control Method (AACM) project performed at the Oak Hollow Apartments in Fort Worth, Texas. Upon completion of the AACM project, the EPA prepared a peer reviewed draft report. However, the final version of that report was never published and as a result, the project has entirely stalled despite repeated attempts by the City for clarity and answers.
 

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  - a. Why has the EPA repeatedly decided not to publish legitimate scientific research so that the public and broader scientific community may have access to this data?
  - b. Furthermore, I request copies of all documentation related to the recent "re-review" of documents related to the AACM and the data generated during and after the demolitions as referenced in the April 26, 2013 letter from the EPA to the City of Fort Worth.

**The Honorable Joseph R. Pitts**

- 1. In Pennsylvania, we have benefitted greatly from having electric generating units that burn coal refuse (also called waste coal) to create affordable, domestic energy. By processing this coal refuse, these units have had significant positive effects on the surrounding environment as well. In fact, to date, these units have been used to reclaim some 8,200 acres of damaged land and improve hundreds of miles of streams.

The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, however, and among other things, the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. In anticipation, the industry has approached the EPA seeking reconsideration under the rule and has also met with various members of your staff including Acting Assistant Administrator for the Office of Air and Radiation Janet McCabe.

*Would you please provide an update on the status of these discussions and the industry's request for reconsideration? What is your schedule for responding? Will you commit to continuing these discussions with the industry in order to avoid shutting down these facilities and harming both the local environment and economy?*

- 2. In the preambles of various EPA proposed rules, the agency has specifically mentioned and discussed the environmental benefits associated with reclamation of coal refuse to produce electricity. If the EPA's Mercury and Air Toxics Rule (MATS) is enforced as it is currently written, however, a number of these facilities will likely be forced to close as a result of compliance costs. *Does the EPA have an alternative plan to clean up these coal refuse piles if and when these facilities are forced to shut down as a result of MATS?*

3. I know that one of our colleagues from Pennsylvania, Mr. Rothfus, has been actively engaged on the issue of electrical generating units that process coal refuse and has been seeking some sort of solution that will allow these units to continue in operation after the Mercury and Air Toxics Rule (MATS) takes effect next spring.

As currently written the rule establishes hydrogen chloride and sulfur dioxide emission limitations that are unattainable for most coal refuse fired units. There is significant concern that implementation of the rule will force many plants to shut down and their workers to lose their jobs.

Mr. Rothfus has asked me to invite you and your staff to tour these facilities and see firsthand the sort of positive impacts that they have had on the surrounding areas. *Will you commit today to making this a priority and ensuring that those on your staff who are responsible for this issue will travel and meet with the coal refuse industry to work to find a mutually-agreeable solution?*

4. The EPA's Mercury and Air Toxics Rule (MATS) takes effect next April, and many in the coal industry have expressed significant concern about the associated compliance costs. *To date, how many utility and non-utility coal fired boilers have announced they are shutting down as a result of MATS? How many requests for reconsiderations has the EPA received, and how many has your agency acted upon? What is your schedule for responding to any and all pending requests for reconsideration so that industry can have certainty about their future costs?*
5. The month of January 2014 saw two historic cold snaps in the Eastern United States. The first, the polar vortex, brought the lowest temperatures in decades across the East and Southeast in early January. The second event brought more record-cold temperatures to the Northeast and Midwest, along with paralyzing snow and ice to the Southeast.
  - a. Let me ask some straight-forward yes or no questions:
    - i. Does affordable, reliable electricity play a critical role in promoting economic growth?
    - ii. Does affordable, reliable electricity play a critical role in protecting public health and safety?
    - iii. Does affordable, reliable electricity play a critical role in responding to severe weather and natural disasters, regardless of the causes?
6. Recently, the Chairman of the North Carolina Public Utility Commission and other officials wrote to Acting Assistant Administrator of the EPA, Janet McCabe, about EPA's pending rules for existing power plants. They stated that "It is no secret that the economic recovery across the United States is fragile and many ratepayers struggle to pay their monthly bills, including their utility bills."
  - a. Do you agree that the economic recovery across the United States is fragile?
  - b. Do you agree that many ratepayers struggle to pay monthly utility bills?
  - c. In developing rules, does EPA analyze the impacts on the rates people pay for electricity?
  - d. In conducting that analysis, is there a threshold for electricity price increases that EPA finds unacceptable? For example, if rates are going to go up by ten, twenty, fifty dollars a month per household in communities in Pennsylvania?

- e. We had testimony just last month about how those kinds of rate increases – even twenty dollars a month -- can be too much for many ratepayers, especially in today's economy.
7. The Natural Resources Defense Council has proposed an cap-and-trade approach to regulating carbon dioxide emissions from power plants. An analysis of that proposal by the National Economic Research Associates concluded that NRDC's proposal could cost consumers \$13 billion to \$17 billion per year in higher electricity and natural gas prices.
- a. Is an approach that will mean those kind of higher energy costs acceptable to EPA?

**The Honorable Lee Terry**

- 1. Are you familiar with the Farmer Identity Protection Act: A bipartisan bill introduced by Crawford, McIntyre, Costa and myself?
    - a. Do you support or oppose?
    - b. Barring legislation, what assurances can you give the farmers of America that their information is safe?
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- 2. Last week, you testified before the House Interior Appropriations Subcommittee and said farmers would have greater certainty because you now have put out a list of 50 or more exemptions. Experts in the Clean Water Act have indicated that the certainty you talk about comes about only because EPA has decided broadly to assert jurisdiction in spite of the Supreme Court decisions in SWANCC and Rapanos.
    - a. Can you tell the committee where you have not asserted jurisdiction where you previously claimed it?
    - b. Can you tell the committee how your proposed rule comports with the Court's rulings in SWANCC and Rapanos?
    - c. Is it correct that a farmer only qualifies for any one of these exemptions if the farmer follows NRCS standards?
    - d. Is it true that any – or all – of these exemptions can be changed, curtailed or even eliminated by NRCS without notice to the public and without public input?

**The Honorable Michael C. Burgess**

- 1. Please list the names, titles, salaries, and dates of Title 42 appointments for all EPA employees compensated under the Title 42 program, including current and past recipients.
- 2. In its response to the GAO's recommendation in 2012 regarding handling of ethics issues under the Title 42 program, EPA wrote that although they disagreed with the recommendation, the agency would soon implement plans that would address issues that arise after appointment under Title 42. GAO stated that these plans may address the concerns documented in the 2012 report and may be the basis for closing the recommendation as implemented. GAO has stated that it is currently reviewing plans issued by EPA and will follow up in December 2013 to understand if additional plans have been released internally to the agency.

- a. What plans has the EPA issued in response to the issues raised by the GAO recommendation? Have additional plans been released internally to the agency?
  - b. Has EPA been in communication with GAO regarding Title 42 issues over the last five months? If so, what is the status and nature of the communications?
3. Does EPA have plans to use authority under Title 42 Section 209 (f)? If so, has EPA developed guidance for implementing such authority?
4. In December 2010, EPA began a pilot of using market salary data to estimate salaries of what Title 42 candidates could earn in positions outside of government given their education, experience, professional standing, and other factors. According to the GAO, this pilot was to conclude in December 2012. What is the status of the market salary pilot? Did EPA analyze the pilot's effect on salary negotiations? If yes, what did the analysis show?
5. EPA's authority to use Title 42 pay scales granted through the annual appropriations process expires in 2015. Does EPA intend to ask for an extension to use this authority? Has EPA had discussions with the Appropriations Committees in the House and/or Senate regarding such an extension? Does EPA intend to request that it be granted Title 42 hiring authority through the authorizing committees, either in the House or Senate?
6. It appears that a number of executive branch agencies are working on methane. EPA is looking to regulate oil wells with associated gas, DOE is holding roundtables, DOI is looking at methane capture for royalties, the WH is issuing white papers and I think I'm probably missing a few. Can you give the committee an update on this issue, who is on point, how is it being coordinated, where is it headed and what are you doing to avoid duplication of effort and overlapping regulatory and budget requirements?
7. Please provide the committee with the research funding EPA has provided to the current ozone CASAC panel members, the research institutions with which the panel members are associated, and the name and amount of each project grant by individual or research institution?
8. EPA's website for tracking regulations used to indicate that EPA planned to propose ozone standards in 2014, but now has no schedule indicated.
  - a. What is EPA's current schedule for proposing new ozone standards?
  - b. What is EPA's current schedule for finalizing the standards?
9. The most recent ozone standards were published in 2008, and have not yet been implemented. In proposing new standards next year, will EPA propose retaining the current standards set in 2008?
10. EPA estimated that the 2010 ozone NAAQS reconsideration could have cost American manufacturing, agriculture and other sectors up to \$90 billion per year. I'm concerned that we are driving manufacturing out of the U.S. to other countries with lax environmental standards.
  - a. In analyzing these regulations, does EPA consider the economic and environmental effects of driving manufacturing offshore to countries with little or no environmental controls? If not, shouldn't the agency consider that?
11. Regarding the Keystone XL Pipeline, has EPA completed its analysis of SEIS and will EPA try to delay the process again?



12. In this rule, I understand that EPA contends the proposed rule would actually result in fewer federal jurisdictional determinations and provide greater clarity to the regulated community.

Furthermore, EPA claims that by codifying a specific exclusion for ditches located in uplands and drain only uplands should result in far fewer man made drainage ditches becoming subject to the Clean Water Act's (CWA) regulatory and permitting requirements.

However, the proposed rule also contains an entirely new and significantly expanded definition of "tributary" that includes any feature (e.g., natural or manmade) that has a bed, bank, ordinary high water mark, and eventually contributes flow (surface or subsurface) to "Traditional Navigable Waters." Furthermore, the proposed rule's definition of tributary specifically includes manmade ditches, pipes, or culverts.

In my District (Texas 26<sup>th</sup>), like many other places in the country, there are literally thousands of miles of manmade roadside drainage ditches installed and maintained by county governments for primary purpose road safety. These roadside drainage ditches are located in both uplands and other areas.

How can these manmade roadside drainage ditches benefit from the proposed rule's exclusion when these ditches also considered a tributary under the proposed rule?

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13. I understand that the EPA worked to create a scientific study to illustrate the need for this regulation. This scientific report, entitled "Connectivity of Streams and Wetlands to Downstream Waters" states that all waters require federal protection, regardless of size or significance in connectivity.

In the *Rapanos* and the *SWANCC* decisions that preceded it, the Supreme Court made clear that there is a limit to federal jurisdiction under the CWA, specifically rejecting the notion that any hydrologic connection is a sufficient basis to trump state jurisdiction. Do you think that the term "significant nexus" should be quantified in order to ensure that it does not extend jurisdiction to waters that have a de minimis connection to jurisdictional waters? Perhaps this is something that the National Academy of Science could look into?

14. Why didn't the EPA wait until the scientific study's Science Advisory Board panel gave their final recommendations (expected in May/June) before proposing the rule?

#### **The Honorable Bill Cassidy**

1. My area has many communities who feel particularly strapped by the price tag required for compliance with EPA regulations under the Safe Drinking Water Act. I noticed the President's proposed budget provides that 30 percent of state allocations from the Drinking Water State Revolving Loan Fund would (DWSRF) be used for debt forgiveness.
- a. How does this use of the Drinking Water State Revolving Loan Fund compare to other needs addressed by the DWSRF?
  - b. In 2009, the American Recovery and Reinvestment Act doubled the amount made available to DWSRF accounts. How much of the debt forgiveness is meant to cover loans made for the "shovel ready projects" covered by this spending?

- c. From a practical perspective, what types of needs ordinarily addressed by the DWSRF will be squeezed out by use of DWSRF money this way?
  - d. Does the Obama Administration consider the current DWSRF self-sustaining?
2. The Safe Drinking Water Act's funding is meant to assure compliance with the public health-based mandates of the law, not merely build infrastructure. I noticed the President's budget contains a Sustainable Water Infrastructure Policy to "develop sustainable systems that employ effective utility management practices to build and maintain the level of technical, financial, and managerial capacity necessary to ensure long-term sustainability."
- a. Can you assure me, apart from a general desire to provide technical assistance to drinking water systems, that this particular program will not divert precious resources away from compliance and towards construction planning in certain communities?
3. Last week, EPA and the Corps of Engineers jointly released a proposed rule relating to "waters of the United States."
- a. Before issuing the proposed rule, did EPA assess whether the proposed rule could affect the building of new energy infrastructure? For example:
    - i. Did EPA analyze whether it may be more difficult to build a new power generating facility, or expand an existing one?
    - ii. Did EPA analyze whether it may be harder to lay new pipelines or power lines because of the need to obtain wetlands or other permits?
  - b. Has EPA analyzed whether the proposed rule would trigger new permitting requirements relating to maintaining existing energy infrastructure? For example:
    - i. Will there be a need for new permits to do routine maintenance on transmission lines or pipelines? Or to obtain individual permits for activities that are currently covered under general or nationwide permits?
4. As you know, EPA issues many regulations that can impose very large compliance costs, many of which are ultimately passed on to consumers. Last year, I introduced the Energy Consumers Relief Act (HR 1582) to provide greater transparency and oversight over EPA's multi-billion dollar energy related-rules.
- a. At the time the House considered that bill, the Congressional Budget Office estimate indicated there would be about 25 more energy-related EPA rules in the next 5 years that would cost \$1 billion or more to implement.
    - i. Is CBO's estimate accurate? Are there really 25 billion-dollar energy related rules coming out of the EPA in the next five years?
    - ii. If you don't know, can you get back to the Committee about whether the estimate is accurate?
  - b. Can you provide us a list of all rules EPA is currently working on or plans to work on in the foreseeable future that the agency expects will impose compliance costs of \$1 billion or more?

### **The Honorable Adam Kinzinger**

As you know, the most pressing issue facing the biodiesel industry, and indeed all renewable fuels industries, is the EPA's recently proposed rule for volumes under the Renewable Fuel Standard (RFS). Biodiesel companies across the country – based on the clear signals of support sent by this Administration – invested their time and resources to build biodiesel plants that would assist in meeting the targets set by the RFS.

Biodiesel is an unmitigated RFS success story. It is the first EPA-designated Advanced Biofuel being produced on a commercial-scale across the country. The industry, with the help of strong energy policy, has crossed the billion-gallon threshold for three consecutive years, and this year is on pace for a record year of more than 1.7 billion gallons. Gallon for gallon, according to EPA's own calculations, biodiesel is reducing greenhouse gas emissions by 57 to 86 percent. All of this is happening as biodiesel blends at the pump – usually of 5 percent or less – are saving consumer's money.

Under the proposal EPA believes biomass based diesel can compete just as it did in 2013 even though it would dramatically cut production back to 1.28 billion gallons. As proposed, the advanced standard would also be reduced to 2.2 billion gallons. Based on the equivalence value of our fuel and nesting, there would be a maximum on 290 million gallons available for biomass-based diesel, other advanced fuels and cellulosic production. With potential for carryover of excess 2013 volume into 2014, we could see a market closer to 1 billion gallons. Obviously, cutting an industry from a 2 billion gallon production rate down close to 1 billion gallons would cause incredible harm. Plants would close. People would be out of work. Further, EPA has proposed this cut for 2014 and 2015, for two years, sending a terrible signal to investors and entrepreneurs who are poised to continue building this industry.

In this regard, please provide written responses to the following questions:

1. With no feedstock, infrastructure or compatibility issues, what other factors did the administration take into account when not increasing the RVO?
2. What factors has the industry not met in order to have its volume increased to at least 1.7 billion gallons? What information do you still need?
3. Have you taken into consideration how potential Argentinian biodiesel imports will impact the volume of RFS qualifying biodiesel in 2014?
4. When do you anticipate the 2014 RVO being finalized?
5. Are there aspects of biodiesel that make you uncomfortable with it as a replacement to diesel fuel?

### **The Honorable H. Morgan Griffith**

1. In 1972 when the Amendments to the Federal Water Pollution Control Act were being discussed by Congress, Senator Edward Muskie of Maine, in addition to strongly emphasizing the need to protect the nation's waterways, reminded the chamber that there were "three essential elements" to the legislation: "uniformity, finality, and enforceability." How does your interpretation of your authority under the Clean Water Act comport with the notion of permit finality?
2. Do you agree that finality is an important consideration for permits? How does EPA intend to provide certainty to the regulated community that they can receive due process to have their projects fairly

considered, and can rely on their permits once they are issued, in light of the agency's recent actions concerning Pebble and Spruce?

**The Honorable Bill Johnson**

1. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. Given that the President's Climate Action Plan relies heavily on the use of natural gas, what is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that is lowering all Americans energy prices, creating jobs, helping to lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?
2. I am aware that the EPA is considering whether a health-based standard is possible for this industry, and I applaud your consideration of this discretionary approach. I also understand that the brick industry has supplied you with all the information necessary to evaluate a health-based compliance alternative for every major source. Could you please describe in detail: What impediments you see to establish a health-based rule for this small industry comprised of a large number of small businesses and how those impediments could be overcome? It would make sense if you would use this approach, since it seems to be both protective of the environment, achievable, and allow the industry to survive.
3. An emission standard is broadly defined in the Clean Air Act. Why would the EPA look to a single facility to establish the emission level for all facilities to meet, rather than consider a health-based metric as a possible emission standard format?
4. The rule-makings for the brick industry have been impacted by the EPA's "sue and settle" approach to dealing with third-party lawsuits on both rounds. The now-vacated MACT was rushed in 2003 due to a pending lawsuit from an environmental group, resulting in a rule that was vacated by the courts for its deficiencies. Now, this industry is facing another court-ordered schedule based on a consent decree that you recently accepted. What assurances can you give the Committee, and this industry, that the schedule will not be used as justification for yet another rushed, deficient rule? What can you do to ensure that new rule will include a full consideration for the alternative approach of using a combination of both health-based and work-practice standards to ensure that the requirements of the Clean Air Act are followed and the environment is protected, without requiring huge burdens on a critical industry that provide limited to no environmental benefit?
5. My office has been coordinating with the Ohio Department of Natural Resources (ODNR), Ohio Environmental Protection Agency and your Agency to clarify what the Ohio Department of Natural Resources would need to include in their Risk Based Data Management System in order to be fully compliant with the Emergency Planning and Community Right-to-Know Act. Can your Agency provide ODNR with the requested 'check list' of all elements, as soon as possible, that would need to be included in their upgraded database to ensure that full compliance is met?

**The Honorable Gus Bilirakis**

1. Administrator McCarthy, Tampa Electric Company serves my constituents in Hillsborough County, Florida. I understand that they recently completed a ten year, \$1.2 billion emissions reduction initiative which reduced CO<sub>2</sub> emissions by 20% compared to 1998 levels. Their most significant CO<sub>2</sub> reductions began in 2005. As 2005 is also the suggested baseline year for reductions under EPA's 111d rule for existing power plants, recognition of these reductions is important to protecting Tampa Electric customers